

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 604

DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, ET AL, APPELLANTS,

vs.

MISSOURI

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

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[fol. 1]

**IN THE
CIRCUIT COURT OF JACKSON COUNTY, MISSOURI**

PETITION FOR INJUNCTION

Comes now the State of Missouri, in its sovereign right, by Thomas F. Eagleton, as Attorney General for the State of Missouri, acting in that behalf, and informs the Court and charges as follows:

1. That the defendant Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, hereinafter sometimes referred to as "The Union," is and was an unincorporated voluntary association of persons with headquarters and offices at 913 Tracy Avenue, in the City of Kansas City, Missouri, and is usually and commonly known as a labor union or labor organization.

2. That at all material dates the following defendants were holders of official positions in Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, as follows:

Loren Hargus, President, Pearl R. Finch, Vice President, James L. Grimes, Financial Secretary-Treasurer, Lorrain B. Firkins, Recording Secretary, James Smirl, First Warden, Delbert H. Lord, Second Warden, Victor H. Stueve, First Conductor, Earnest E. O'Neill, Second Conductor, Wm. V. Mitchell, First Sentinel, Oliver D. Pace, Second Sentinel, Edward J. Arens, Correspondent, Lewis A. Copple, Executive Board Member, Lester F. Parker, Executive Board Member, James T. Strohm, Executive Board Member, Donald Rigby, Executive Board Member, and Vincent [fol. 2] Anello, Steward; that defendants Loren Hargus, Lewis A. Copple, James T. Strohm and Donald Rigby are members of the Union Negotiating Committee of said Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America; that the aforementioned individual defendants will hereinafter sometimes be referred to as "Officers."

3. That at all material dates herein the defendants Wm. K. Boland, Frank E. Brown, Herbert Lee Brown, A. F. Clark, Kenneth B. Hood, Carroll R. Lollard, Loyd A. Dailey, Earl Thomas Denyer, Joseph M. Eitel, Harold L. Ellis, James Clifford Fisher, Robert Lee Fravel, Robert Donald Goforth, John G. Hall and Orville George Halley were employees of Kansas City Transit, Inc., and members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.

4. That all of the employees in the State of Missouri of the Kansas City Transit, Inc., who are members of and affiliated with said Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America had and have a joint and common interest in the labor dispute, strike and work stoppage, hereinafter referred to as the persons and individuals specifically named as defendants herein, that the employees of Kansas City Transit, Inc., who are members of and affiliated with said Division 1287 of the Amalgamated Association [fol. 3] tion of Street, Electric Railway and Motor Coach Employees are too numerous in number to be made parties to this action; and the persons and individuals specifically named as defendants herein are also sued as representatives of and for and on behalf of all employees of Kansas City Transit, Inc., who are and were members of and affiliated with defendant Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America as an adequate representation of all of said employees and members; said defendant employees will hereinafter sometimes be referred to as "the employees,"

5. That defendant Loren Hargus has and maintains his place of residence at 5734 South Benton, Kansas City, Missouri.

6. That Kansas City Transit, Inc., above named, and hereinafter sometimes referred to as "The Company," is and was at all material dates a corporation organized and existing by virtue of the laws of the State of Missouri, under governmental franchise issued and authorized by the laws of said state, transacting the business of a public util-

ity and furnishing a form of transportation in the state of Missouri to the public generally in the city of Kansas City, Missouri, and in Jackson and Clay counties, Missouri, by means of motor busses, and so engaged was and is furnishing a life essential as described and referred to by Chapter 295 of the Revised Statutes of Missouri, 1959; that at all material dates and in the business of furnishing the transportation aforesaid, said Kansas City Transit, Inc., owned, operated, or had in use, approximately 401 motor busses operating over 415 round-trip miles of streets and road in the city of Kansas City, Missouri, and in Jackson and Clay counties, Missouri, and said Kansas City Transit, Inc., by such motor busses, furnished transportation service to approximately 100,000 passengers per day within the state of Missouri.

7. That at and prior to all material dates herein, said Kansas City Transit, Inc., employed in the business of furnishing the transportation service aforesaid and in the transaction of its business as a public utility within the state of Missouri approximately 958 persons, 817 of whom are and were members of the defendant union, Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, and of and among said employees were each and all of the persons and individuals named as defendants herein, and all of such employees of Kansas City Transit, Inc., affiliated with said union, including the persons and individuals named as defendants herein, and on all material dates in this petition set out or referred to, are and were engaged and participating in a labor dispute, work stoppage and strike hereinafter referred to.

8. That the work and labor done and performed by the employees was done and performed as a part of the transportation service furnished by The Company and was done and performed within the state of Missouri.

9. That on November 13, 1961, the members of the defendant union who are employees of The Company did vote to cease to work for and on behalf of The Company and to go out on strike as against employment by and performing

work for and on behalf of The Company in furnishing said transportation service in the state of Missouri unless agreement was reached in the labor dispute then existing between The Company and The Union and its members.

10. That no agreement had been reached between The Union and The Company on November 13, 1961, and that by reason of the threatened strike and work stoppage against The Company by the members of The Union aforesaid, which threatened strike and work stoppage threatened to impair and interrupt the effective operation in the state of Missouri of The Company as a public utility in furnishing public transportation service, John M. Dalton, as Governor of the State of Missouri, on the 13th day of November, 1961, by virtue of the authority of Chapter 295 of the Revised Statutes of Missouri, 1959, and particularly Section 295.180 thereof, did issue his Proclamation, a copy of which is attached hereto as Exhibit A and made a part hereof.

11. That on the same day, to wit, November 13, 1961, John M. Dalton, as Governor of the State of Missouri, by [fol. 6] virtue of the authority of Chapter 295 of the Revised Statutes of Missouri, 1959, and particularly Section 295.180 thereof, did issue his Executive Order No. 1, a copy of which is attached hereto as Exhibit B and made a part hereof.

12. That on the 13th day of November, 1961, said John M. Dalton, Governor of the State of Missouri, under and by virtue of the authority vested in him by the Constitution of Missouri and statutes thereof, including Section 295.180 of the Revised Statutes of Missouri, 1959, in order to insure a continuation of the operation of the transportation service theretofore operated by The Company, aforesaid, in the state of Missouri and because of the threatened strike and work stoppage by the employees of The Company as stated and set forth in paragraphs 9 and 10 hereof, did take immediate possession of the plants, equipment and facilities of said Kansas City Transit, Inc., for the use and operation thereof by the State of Missouri in the public interest.

13. That upon taking possession of the plants, equipment and facilities of The Company by John M. Dalton, Governor

of the State of Missouri, the employees and defendants herein have continued the labor dispute aforesaid, and on November 14, 1961, said employees and defendants herein failed and refused, and still fail and refuse, to perform work or labor for and on behalf of the State of Missouri in the furnishing of the transportation services aforesaid through [fol. 7] the plants, equipment and facilities of The Company to the patrons of said company and to the people generally in the state of Missouri; that thus and thereby has been caused an actual interruption of the operation of the transportation services, as aforesaid, of the public utility, Kansas City Transit, Inc.; that the interruption of the furnishing of such transportation services through the plants, equipment and facilities of The Company and the refusal of the employees to perform work and labor for and on behalf of the State of Missouri in the furnishing of such transportation service has jeopardized and threatened the public interest, health and welfare of the state of Missouri and of the inhabitants thereof.

14. That the employees, including the named individual defendants herein, The Union and The Officers, have incited, supported and participated in, as a joint and common cause, the work stoppage and strike aforesaid and refusal to work for and on behalf of the State of Missouri in furnishing the transportation service aforesaid through the plants, equipment and facilities of The Company, and that said employees, officers and union will continue to incite, support and participate in said work stoppage and strike aforesaid unless restrained and enjoined by the order and judgment of this Court.

15. That Chapter 295 of the Revised Statutes of Missouri, 1959, and especially Section 295.200, makes such [fol. 8] action on the part of the union and officers in calling, inciting, supporting and participating in said strike and concerted refusal to work for the State of Missouri unlawful.

Wherefore, the State of Missouri, named as plaintiff herein, in its sovereign right, prays the Court:

(1) That, upon the filing of this petition in this Court, this Court issue its temporary restraining order restraining and enjoining the defendant union, officers and employees, including the individually named defendants herein and all persons in active concert or participation therein, pending the further order of this Court, from continuing, inciting, supporting and participating in the work stoppage, refusal to work and the strike aforesaid against the State of Missouri or Kansas City Transit, Inc.

(2) That, with or without issuing its temporary restraining order as prayed above, and with or without an order to show cause, this Court issue its temporary injunction restraining and enjoining the defendant union, officers and employees, including the individually named defendants and all persons in active concert or participation therein, from doing any of the things mentioned in paragraph 1 of this prayer, and further ordering the defendant employees to perform the work and labor necessary for and on behalf of the State of Missouri, through the plants, equipment and facilities of Kansas City Transit, Inc., to continue and furnish the transportation service aforesaid, as furnished [fol. 9] by Kansas City Transit, Inc., until the further order of this Court and that all and every person, their agents, servants and attorneys, be enjoined and restrained from in anywise interfering with said employees in the performance of said duties to and through the State of Missouri.

(3) That upon final hearing of this cause, this Court permanently restrain and enjoin the defendants and other persons above mentioned from doing any of the things mentioned in paragraph 1 of this prayer, and further order the defendant employees to perform the work and labor necessary for and on behalf of the State of Missouri, through the plants, equipment and facilities of Kansas City Transit, Inc., to continue and furnish the transportation service as aforesaid, as furnished by Kansas City Transit, Inc., and that all and every person, their agents, servants and attorneys, be permanently enjoined and restrained from in anywise interfering with said employees in the performance of said duties to and through the State of Missouri.

(4) Plaintiff prays for such other and further relief in the circumstances as may be just and proper.

IN THE CIRCUIT COURT OF JACKSON COUNTY

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
—November 15, 1961

Upon presentation to the Court of the verified petition of the plaintiff in the above-entitled cause, it is hereby Ordered that the defendants in the above-entitled cause show cause on the 27th day of November, 1961, at 1:30 o'clock, P.M., why a temporary injunction should not be granted as prayed in the petition in said cause, and

It Is Further Ordered that until the determination of this Court upon this order to show cause whether a temporary injunction shall issue, the defendants in the above-entitled cause, and all persons in active concert or participation therein, are hereby enjoined and restrained from continuing, inciting, supporting and participating in any work stoppage, refusal to work and strike against the State of Missouri or Kansas City Transit, Inc.

It Is Further Ordered by this Court that a copy of this Order, duly certified by the Clerk, be served upon the defendants in said cause.

Dated this 15th day of November, 1961.

J. Donald Murphy, Judge of the Circuit Court.

[fol. 12]

TRIAL

Be It Remembered that on Monday, November 27, 1961, the above entitled cause came on for hearing before the Honorable J. Donald Murphy, Judge of Division No. Eleven of the Circuit Court of Jackson County, Missouri, at Kansas City.

The Plaintiff was represented by counsel Messrs. Gordon Siddens, First Assistant Attorney General, and Julian L. O'Malley, Assistant Attorney General.

The Defendants were represented by counsel Messrs. Bernard Dunau and John J. Manning.

IN THE CIRCUIT COURT OF JACKSON COUNTY

MOTION TO DISMISS—Filed November 27, 1961

Now comes Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, hereinafter referred to as "Amalgamated", Loren Hargus, Pearl R. Finch, James L. Grimes, Lorrain B. Firkins, James Smirl, Delbert H. Lord, Victor H. Stueve, Earnest E. O'Neill, Wm. V. Mitchell, Oliver D. Pace, Edward J. Arens, Lewis A. Copple, Lester F. Parker, James T. Strohm, Donald Rigby, Vincent Annello, Wm. K. Boland, Frank E. Brown, Herbert Lee Brown, A. F. Clark, Kenneth B. Hood, Carroll R. Lollard, Loyd A. Dailey, Earl Thomas Denyer, Joseph M. Eitel, Harold L. Ellis, James Clifford Fisher, Robert Lee Fravel, Robert Donald Goforth, John G. Hall, and Orville George Halley, defendants in the [fol. 13] above entitled cause, and state that Amalgamated is the collective bargaining agent of certain of the employees of the Kansas City Transit, Inc. in accordance with a certification issued by the National Labor Relations Board in Case No. R-4705, which certification was issued pursuant to an election held following a National Labor Relations Board Order and Decision reported at 47 N.L.R.B. 1. At the time of the issuance of the certification the name of the employer was Kansas City Public Service Company which name has now been changed to Kansas City Transit, Inc. Pursuant to said certification, defendant Amalgamated is and at all times material hereto has continued to be the exclusive collective bargaining agent of said employees of Kansas City Transit, Inc.

The defendants move to dismiss the petition filed herein by plaintiff for the following reasons:

1. Kansas City Transit, Inc., hereinafter referred to as the "Company", is a public utility providing passenger transportation service for hire by motor vehicle in and between points in the Kansas City, Mo.-Kansas City, Kansas metropolitan area under certificates of convenience and necessity issued by the Interstate Commerce Commission and by the States of Missouri and Kansas. The Company is an employer engaged in interstate commerce and in ac-

tivities affecting commerce within the meaning of the Labor-[fol. 14] Management Relations Act, 1947, and is subject to the jurisdiction of the National Labor Relations Board, which has asserted and exercised jurisdiction over it.

2. The defendant Amalgamated in its relations with the Company as the collective bargaining agent of certain employees of said Company is and at all times material hereto has been subject to all of the provisions of the Labor-Management Relations Act, 1947.

3. The defendants state that Chapter 295, Revised Statutes of Missouri, 1949, and especially Sections 295.180 and 295.200 of said Chapter 295 are unconstitutional and invalid and all actions taken thereunder by the Governor of Missouri and Daniel C. Rogers are unlawful, invalid and without any force or effect for the reasons herein set forth and are in derogation of the rights, privileges and immunities granted to all members of the defendant Amalgamated and guaranteed by the Constitution of the United States in Article I Section 8 and Article VI of said Constitution, and the Thirteenth and Fourteenth Amendments of the Constitution of the United States:

(a) Chapter 295, R. S. Mo., 1949, is in conflict with the Labor-Management Relations Act, 1947, and therefore is unconstitutional and invalid because it violates Section 8 of Article I and Article VI of the Constitution of the United States.

[fol. 15] (b) Chapter 295, R. S. Mo., 1949, is in conflict with the National Labor Relations Act and the Labor-Management Relations Act of 1947 and interferes with the purposes of said Acts to promote voluntary labor agreements through free collective bargaining.

(c) Section 295.200 of said statute, which makes it unlawful for employees of public utilities to strike, is in conflict with the Labor-Management Relations Act of 1947 and Section 7 and Section 13 thereof, and is in violation of Article VI and Article I, Section 8 of the Constitution of the United States.

(d) Section 295.180 of said Law, providing that a public utility may be seized on the terms and conditions therein set

forth is in conflict with the Labor-Management Relations Act, including but not limited to Section 7 and Section 13 thereof.

(e) Sections 295.120 to 295.170, inclusive, R. S. Mo., 1949, providing for public hearing panels is in conflict with the Labor-Management Relations Act of 1947.

(f) Section 295.200 of said Revised Statutes of Missouri, 1949, providing penalties for employees who strike in economic strikes and penalizing public utilities which refuse to bargain collectively in good faith with employees, is in conflict with and in violation of the National Labor Relations Act, including, but not limited to Sections 2(3), 7, 8 and 13 [fol. 16] of said Labor-Management Relations Act of 1947, and attempts to legislate on a subject and in an area fully preempted by Federal law.

(g) Chapter 295.090, R. S. Mo., 1949, constitutes a denial of the right of free collective bargaining by utility employees through representatives of their own choosing, and is unconstitutional and void under Article I Section 8 and Article VI of the Constitution of the United States as being in conflict with the Labor-Management Relations Act.

(h) Section 295.200(1), R. S. Mo., 1949, by its terms, substance and effect, is void on its face and violates the provisions of the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and is a denial of freedom of speech and freedom of assemblage and equal protection of the laws, and a provision of involuntary servitude in violation of said Constitution.

(i) Section 295.090, R. S. Mo. 1949, by its terms, substance and effect, is void on its face and violates the provisions of the Fourteenth Amendment of the Constitution of the United States and is in conflict with the Labor-Management Relations Act of 1947.

(j) Section 295.200, R. S. Mo., 1949, violates the provisions of the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States and is in conflict with the provisions of the Labor-Management Relations Act, 1947.

[fol. 17] (k) Section 295.200, R. S. Mo., 1949, is a denial of freedom of speech, freedom of assemblage and equal protection of the laws; the penal provisions thereof provide for imposition of excessive fines and the terms and substance thereof impose a form of compulsory service or involuntary servitude.

(l) Said Section 295.200(2), R. S. Mo., 1949, is an attempt to take property without due process of law, interferes with the freedom of contract and denies to all employees of utilities the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States.

(m) Chapter 295, R. S. Mo., 1949, is in conflict with various provisions of the National Labor Relations Act, as amended, and the Labor-Management Relations Act of 1947, as amended, in that it attempts to deny and take away rights guaranteed by Sections 2(3), 7, 8 and 13 and other provisions of said Acts.

(n) Chapter 295, R. S. Mo., 1949, is unlawful and invalid in its entirety, because it attempts to legislate and operate in a field and cover activities fully preempted by and covered by existing Federal law enacted by Congress pursuant to authority of the Constitution of the United States.

(o) Chapter 295, R. S. Mo., 1949, is unlawful and invalid because as applied to the defendants and the operations [fol. 18] of the Company it attempts to directly regulate an interstate operation and is, therefore, in violation of Article I Section 8 of the Constitution of the United States.

(p) Chapter 295, R. S. Mo., 1949, is invalid and in conflict with Article I Section 8 of the Constitution of the United States because by such legislation the State of Missouri seeks to give this statute extra-territorial effect through the method of seizure of operations of the Company in the State of Kansas and in and between the State of Kansas and the State of Missouri.

Wherefore, defendants move to dismiss plaintiff's petition herein at plaintiff's cost.

[fol. 19]

IN THE CIRCUIT COURT OF JACKSON COUNTY

Statement of Evidence—November 27, 1961

Defendants' Evidence

PRESTON JENISON was duly sworn:

Direct examination.

By Mr. Dunau:

Q. Mr. Jamison, what is your position, sir?

A. First let me correct. My name is Preston Jenison (spelling) J-e-n-i-s-o-n. I am Vice-President of the Kansas City Transit.

Q. How long have you held that position, sir?

A. I was appointed Vice-President the first of November, 1961.

Q. What previous position have you held with the company?

A. Prior to that time I have been Director of the Transportation Department for about two years and prior to that since 1957 Director of Traffic and Schedule Department. I have been with Kansas City Transit about 32 years.

Q. Thank you, sir.

A. I would like to say in this connection I am appearing here at the request of both parties. The Kansas City Transit is not a party to these matters.

Q. Was the Kansas City Transit, Inc., previously known as the Kansas City Public Service Company?

A. Yes, sir.

Mr. Siddens: Your Honor, I am now going to formally object to any testimony offered in support of defendants' motion to dismiss.

The Court: Overruled.

[fol. 20] By Mr. Dunau:

Q. The answer was yes, sir?

A. Yes.

Q. Did that change of name come about May 25, 1960 approximately?

A. Approximately that.

Q. Now, the business entity which is now known as Kansas City Transit, Inc., is the same business entity as was formerly known as Kansas City Public Service Company, is that correct?

A. Yes, it is the same, merely a change of name.

Q. Is the company chartered by the State of Missouri?

A. We have a certification that was originally issued to the Kansas City Public Service Company and has been transferred to Kansas City Transit.

Q. The company is a Missouri corporation?

A. Missouri corporation, yes, sir.

Q. Does it have its principal office and place of business in Kansas City, Missouri?

A. It does.

Q. Does the company transport passengers by bus in the States of Kansas and Missouri?

A. It does, in Kansas and Missouri.

Q. Does it operate under a Certificate of Convenience and Necessity issued by the United States Interstate Commerce Commission?

A. That I can't—I can't answer that. I don't know.

Q. Does it operate under a Certificate of Convenience [fol. 21] and Necessity issued by the Public Service Commission of Missouri?

A. Yes.

Q. Does it operate under a Certificate of Convenience and Necessity issued by the Kansas State Corporation?

A. I believe that it does.

Q. Can you describe for us the different parts of the operation which the respective certificates cover? Why the two certificates?

A. We have some lines that operate exclusively, one line that operates exclusively in the State of Kansas; we have certain lines that operate exclusively in the State of Missouri; and then the rest of the lines are interstate operating between both states. The Missouri certification would govern our operations wholly within the State of Missouri and the Kansas certification those wholly in the State of

Kansas. Now, those Commissions also have jurisdiction over our affairs, rates and tariffs in their respective states.

Q. Would it refresh your recollection if this is the fact that because of your Interstate Commerce Commission transportation of passengers you also have a Certificate of Convenience and Necessity from the United States Interstate Commerce Commission?

A. I can't answer that definitely because I don't know the facts on that.

[fol. 22] Q. Very well, sir. Do you know the approximate passenger revenue during the year 1960 that the company received?

A. Approximately eight million six hundred thousand.

Q. Would the same ratio of receipts have prevailed during the year of 1961?

A. Approximately the same. They are down slightly.

Q. Now, taking the passenger revenue for the year 1960, can you tell us what percentage of that revenue is derived from transporting passengers wholly within the State of Missouri?

A. Wholly within Missouri is approximately 77 per cent.

Q. And what percentage of passenger revenue is derived from transporting passengers wholly within Kansas?

A. Wholly within Kansas is about 7 per cent.

Q. And approximately what percentage of the revenue is derived from transporting passengers between Missouri and Kansas?

A. That would be approximately 15 per cent. The difference would be in dropping the decimals on the 77 and 7.

Q. Well, approximate is quite sufficient for our purposes I am sure.

A. Approximate.

Q. What is the average number of passengers that are carried by the company in the course of a day?

A. On the total system it is approximately 150,000 on a normal work day.

Q. Now, of this number of 150,000 how many travel exclusively to and from points within Missouri?

[fol. 23] A. Within Missouri it is approximately 100,000.

Q. And of this 150,000 how many passengers travel exclusively to and from points within Kansas?

A. That would be that percentage, I haven't calculated it, a little in excess of 7,000 as I calculate it.

Q. 7,000?

A. Yes, sir.

Q. And I take it that would mean there would be 43,000 passengers that travel from points between Missouri and Kansas, is that correct, sir?

A. Approximately that, yes, sir,—wait a minute, maybe my calculations, let me calculate this again.

Q. Sure.

A. May I ask a question? Mr. Banhart has some figures here.

Mr. Jenison: Do you have those figures?

Mr. Banhart: I didn't quite understand.

Mr. Jenison: The distribution, the 100,000 passengers within the State of Missouri, how many passengers within the State of Kansas and how many passengers interstate?

Mr. Banhart: Per day?

Mr. Jenison: Per day.

Mr. Banhart: Well, I am not sure of the 100,000 being absolutely in Missouri, I think our revenue is around twenty-six thousand, average twenty-six thousand dollars a day, that we had something in excess of a hundred thousand in toto, exactly what, I don't know; then 7 per cent of that [fol. 24] would be Kansas.

Mr. Jenison: We have two types of passengers, revenue passengers and total passengers are two different items. Are you asking about the revenue passengers or total passengers?

By Mr. Dunau:

Q. Would you explain the difference?

A. The difference, we have so many revenue passengers, then we have a transfer ratio of about 40 per cent. Some people use more than one line to complete their trip so the total passengers is higher than the total individual persons.

Q. What I would be interested in, sir, is the total passengers and a break-down of those total passengers in to the number who travel exclusively within Missouri, the number who travel exclusively within Kansas and the num-

ber who travel interstate between Missouri and Kansas and as I understood it you gave me as a total 150,000 for the total number of passengers.

A. Total system.

Q. For the total system of which 100,000 travel exclusively to and from points within Missouri approximately?

A. I think Mr. Banhart here has the figures.

(Colloquy outside the record.)

The Witness; Well, that's approximately then 10,500 within the State of Kansas, a 115,000 in the State of Missouri, and that would leave then approximately twenty-four [fol. 25] twenty-five thousand interstate, if my calculations are correct.

By Mr. Dunau:

Q. Let me see if I understand you, sir. There are total passengers in the system of 150,000?

A. That is correct.

Q. 115,000 travel exclusively within Missouri?

A. Within Missouri, yes, sir.

Q. 10,500 travel exclusively within Kansas?

A. That's correct.

Q. 24,500 travel interstate from points in Kansas to points in Missouri or vice versa?

A. Yes, those are the facts.

Q. Sir, what are the total route miles which are covered by the passenger transit system of the company?

A. Our total round trip miles are approximately 496 miles.

Q. Of this 496 miles how much of that is on routes devoted only to travel within Missouri?

A. The route miles in Missouri are approximately 415.

Q. And what are the route miles exclusively within Kansas, sir?

A. In Kansas they are approximately 81.

Q. Now, can you tell us how many of your route miles are continuous routes between Kansas and Missouri?

A. Now, I don't quite understand your question.

Q. Well, you gave me 415 miles wholly within Missouri.

A. Yes.

[fol. 26] Q. And 81 miles wholly within Kansas, which would make 496 miles which you gave me as the total of the round trip route miles in the system?

A. Yes.

Q. Now, what I would like to know is how many of the company's routes begin in Kansas, are continuous routes through Kansas into Missouri and terminate in Missouri, and how many begin in Missouri, are continuous through Missouri into Kansas and terminate in Kansas.

A. It appears we have 10 lines which would be interstate lines. We have one terminal in Missouri and one in Kansas, the other end in Kansas, 10 lines.

Q. Do you know the mileage of those 10 lines, sir?

A. I don't have that figure separated. I have something here which possibly I can get it from. Now, those miles in Kansas, that would be the 81 miles, round trip miles in Kansas.

Q. Now, sir, what I am—

A. Well, those are all the lines. Now, I will have to add them up here. If my calculation is correct it is approximately 150 round trip miles. That's the lines that operate interstate.

Q. That is correct, sir. Thank you, sir. Now, can you give me the approximate mileage of the routes which operate exclusively in Kansas?

A. We have the one route that is exclusively in Kansas which is the 7th—Parallel line which is 16.78 miles a round [fol. 27] trip.

Q. Do you have a Grand—Central route which operates exclusively in Kansas on nights, Sundays and holidays?

A. Nights, Sundays and holidays it operates exclusively within the State of Kansas.

Q. Is that 10.8 miles round trip, sir?

A. That's the mileage from Missouri to Kansas, I believe. I think the mileage at night would be something less than that. I don't believe I have that figure.

Q. All right. Do you have another route, 27th Street and 3rd Street which operates mid-day exclusively in Kansas?

A. Yes.

Q. Do you have a fourth route, 12th Street—Argentine, which operates exclusively in Kansas on Sundays, holidays and nights?

A. The Argentine portion of it, yes.

Q. The Argentine portion of it operates exclusively within Kansas?

A. That is correct.

Q. Now, can you finally give us the approximate round trip route miles operated exclusively in Missouri?

A. Well, let's see, we have the 496—exclusively in Missouri—you want exclusively in Missouri?

Q. That's correct, sir.

A. What are you asking for different than the 415?

Q. The 415 I take it includes routes which begin in Missouri [fol. 28] but which also terminate in Kansas?

A. Well, then, we would take the 150 from the 415 less the 81, which would be 184 miles.

Q. Of route exclusively within Missouri?

A. Exclusively in Missouri. Now, that's taking out the interstate lines, that's taking out exclusively in Kansas.

Q. That's correct, sir. I think, however,—may I suggest you may have made an error and you may wish to reconsider because you deducted 81 miles as being exclusively within Kansas and I do not think you have 81 miles exclusively in Kansas.

A. That's correct. I believe the figure should be 248.

Q. 248 then would be the figure of your round trip route miles exclusively within Missouri, is that correct?

A. Kansas City, Missouri, yes, sir.

Q. About how many bus drivers does the company employ, sir?

A. Approximately 640. That varies from day to day.

Q. Approximately how many busses does the company operate?

A. The company owns 401 busses.

Q. Can you tell us about how many of these 401 busses operate on the routes exclusively within Kansas?

A. There are eight busses scheduled on the line exclusively in Kansas. That's in the p.m. rush which is our maximum requirement.

Q. And how many busses operate on routes exclusively [fol. 29] within Missouri?

A. Within Missouri in the p.m. rush there are 234. Now, these are on a normal week-day operation.

Q. And how many busses do you operate on routes which are continuous interstate routes between Kansas and Missouri?

A. Interstate there are 104.

Q. Are the places within which the busses are garaged known as barns in the company, sir?

A. Divisions.

Q. Divisions?

A. Divisions and garages.

Q. Divisions and garages. Do the words "divisions and garages", do they mean the same thing, sir?

A. For all practical purposes, the garage is the maintenance part of it, the division is the transportation department.

Q. Now, taking the division, which is the transportation department, how many divisions are there in the company, sir?

A. We have two, one at 9th and Brighton, one at 26th and Harrison.

Q. Are those both located in Kansas City, Missouri?

A. Those are both located in Kansas City, Missouri, yes.

Q. And are all the busses which operate, wherever they operate, do they originate from one of these two divisions?

A. Yes.

Q. And do all bus drivers report for work to one of these two divisions?

A. Yes.

[fol. 30] Q. Then I understand that if a bus operates exclusively on a route within Kansas, the bus driver would have to begin his journey from the garage in Missouri and travel into Kansas in order to operate his route within Kansas, is that correct, sir?

A. Yes.

Q. And I take it the same is true with respect to interstate routes?

A. Yes.

Q. And the same is true with respect to routes wholly within Missouri?

A. Yes.

Q. About how many maintenance employees does the company employ?

A. I believe it is approximately 170.

Q. Where do these employees work? In what location, sir?

A. You mean the maintenance?

Q. The maintenance employees.

A. They work at the 26th and Harrison garage and at the 9th and Brighton and 10th and Lister shop and maintenance department.

Q. Are all these locations within Kansas City, Missouri?

A. Yes, they are.

Q. Now, is the maintenance of vehicles segregated on the basis of whether the bus will operate on a route in Kansas or on a route in Missouri or on an interstate route?

A. The busses are maintained, we don't set a certain bus number to be operated on any route; any bus could be on any route.

[fol. 31] Q. Any bus may be on any route? And I take it that means any maintenance employee can do his work on any bus, is that correct, sir?

A. So far as I understand unless there are some that are qualified only to work on a certain type engine, diesel, propane or gasoline, which I wouldn't know, but for all practical purposes as I understand it they work on any bus.

Q. About what is the total number of the employees who are represented in collective bargaining employed by the company—who are represented in collective bargaining by Division 1287?

A. I will check this with Mr. Banhart. I think that's 817.

Mr. Jenison: Is that correct?

Mr. Banhart: Yes.

Mr. Jenison: 817.

By Mr. Dunau:

Q. Do you know how many of these employees live in Missouri, sir?

A. I do not. Mr. Banhart may know.

Mr. Banhart: I don't know.

A. I don't know.

By Mr. Dunau:

Q. Would the figure 665 be approximately correct, sir?

A. I wouldn't know.

Q. Does the company charter busses to persons for their use on special occasions?

A. Yes.

Q. Do these chartered busses operate interstate, sir?

[fol. 32] A. Yes, within the commercial zone, which includes some part of Kansas.

Q. What does the commercial zone mean, sir?

A. That's a boundary, as I understand, under which we can operate without necessarily fulfilling all Interstate Commerce Commission rules and regulations for over-the-road travel.

Q. But the busses which are chartered do operate interstate?

A. Yes.

Q. Is it exclusively an interstate operation?

A. No, it is not.

Q. Can you give us a division as to approximately how much of these charters are interstate and how much would be local?

A. This would just have to be a guess. My presumption is more of it is in Missouri than interstate. That would be just be a guess on my part. I don't have those figures.

Q. What is the total revenue from the charter service?

(Colloquy outside the record.)

A. According to these figures that I see it averages about four or five thousand dollars per month.

By Mr. Dunau:

Q. That is the total revenue, is that correct, sir, from charter service?

A. From charter service.

Q. Then the break-down between interstate and local would be based on whatever—well, do you know how much of that revenue is derived from interstate?

A. No, I do not know.

[fol. 33] Q. Now, in addition to chartering service, does the company run a regular sight-seeing route?

A. No, we do not.

Q. Does the company furnish freight switching service on rail lines?

A. The company has a party who operates that service. The company itself does not operate it.

Q. Is the company empowered to operate it itself, sir?

A. I will have to check.

(Colloquy outside the record.)

A. I am not familiar with that contract.

By Mr. Dunau:

Q. Was there a time in the past when the company itself operated a freight switching service?

A. Yes, there was.

Q. When did that situation change?

A. In June, '57, 1957.

Q. And what occurred in June, 1957, sir?

A. That freight operation was taken over by another party, it was operated by another party. The Kansas City Public Service Company did not operate it as itself.

Q. It contracted with another to operate this service?

A. To operate this service, yes.

Q. And what railroads are served by this service, sir?

A. I believe they have switching connections with the Missouri Pacific and the Kansas City Southern—Frisco, [fol. 34] Missouri Pacific and Frisco, those two, I believe.

Q. Does the party with which the Kansas City Transit contracts for the operation of this service have the Certificates of Public Convenience and Necessity?

A. You will have to prove that by Mr. Banhart. I don't know.

Mr. Banhart: I am not sure, myself.

By Mr. Dunau:

Q. Do you know whether the certificates are issued to the Kansas City Transit Company?

A. That I can't answer. I would have to check on that.

Q. What revenue is derived by the Kansas City Transit Company from this contract to operate the freight switching service?

A. 10 per cent of the gross.

Q. Do you know approximately how much that would be?

A. Four or five hundred dollars per month.

Q. Can you tell us, sir, what the total expenditure in 1960 for fuel, materials and supplies, was?

A. What was that?

Q. The total expenditure for fuels, materials and supplies in 1960? Would it refresh your recollection if I told you that the annual report of the Kansas City Transit, Inc., shows that total expenditures for fuels, materials and supplies in 1960 came to \$1,456,652?

A. Yes, that is correct.

Q. \$1,456,652 is the answer to my question, sir?

A. For 1960.

Q. For 1960. Now, does approximately the same ratio of [fol. 35] expenditures prevail in the year 1961?

A. About the same amounts in '61 that they were in 1960.

Q. Can you tell us on the expenditures for fuel, materials and supplies about what percentage is derived from sources outside of Kansas and Missouri?

A. I couldn't personally answer that.

Q. Would it be very substantial?

A. It depends on the items. I don't know.

Q. Does gasoline originate in the State of Missouri?

A. I don't presume that it does.

Q. You think that gasoline would have to have an extra-state origin, is that correct, sir?

A. Yes, I believe so.

Q. Would the same be true of oil?

A. I imagine.

Q. Would the same be true of parts for the repairs of the busses?

A. That I am not certain. There might be some available here. That I don't know.

Q. Are there some that are not available here that you acquire from extrastate sources?

A. Yes.

Q. Now, of the busses which the company owns, how many were manufactured outside of Missouri or Kansas?

A. I believe they were all manufactured outside of those two states.

Q. Then they would all have to have been delivered from [fol. 36] other states to Missouri, is that correct, sir?

A. Yes.

Q. If employees are required to continue to work for the company in Missouri, can they conduct a strike confined exclusively to the company's operation in Kansas?

A. Will you restate your question?

Mr. Siddens: I am going to object to that. That seems to me to be entirely a conclusion.

The Court: If I understood the question, objection sustained.

Mr. Dunau: I can understand—I did not mean to ask for whether it is legally possible to do so. What I was directing my question to is whether it can be as a practical matter done regardless of whether it may be legal and permissible.

Mr. Siddens: I still think that that is improper.

The Court: I think you better phrase your question again, unless you wanted it stated that way.

Mr. Manning: I think, Your Honor, what he is attempting to show is still the effect on commerce. In other words, a bus going across the Intercity Viaduct for example into Kansas, can the bus driver strike at that moment as soon as he gets in Kansas or would it be physically and practically possible.

The Court: You are asking the witness as an expert [fol. 37] whether it can be done?

Mr. Dunau: Yes, based on the witness' knowledge of the operation of the company can the employees strike the operation in Kansas while continuing to work in Missouri.

Mr. Siddens: If Your Honor please, that is wholly im-

material to any issue here. The question here is the injunction on the seizure by the Governor of the State of Missouri and it is not a question of striking here against the company, and the seizure does not have any extra territorial effect at all. It only applies to the State of Missouri and the facilities in the State of Missouri.

Mr. Dunau: Our legal position on this question, Your Honor, would be that necessarily the injunction that would be issued by the Court, if one were issued, would require a strike to cease in Kansas as well as Missouri, and for that reason it can't, the Missouri statute has extra territorial effect and for that—

Mr. Siddens: Calling for a conclusion. Obviously this Court and the Governor of the State of Missouri cannot have any effect outside of the State of Missouri.

Mr. Manning: I may say to Your Honor you did issue an order which ran into the State of Kansas by the fact that it prohibited the strike on the Kansas City Transit Company's operations.

The Court: I think I understand what you are driving [fol. 38] at. I do not think you phrased it properly. You are asking him as an expert, the practical effect on the operation of the busses as a result of the restraining order—I think you better ask it again.

Mr. Dunau: Let me try again.

By Mr. Dunau:

Q. As a practical matter, with your knowledge of the operations of the company, can employees engage in a strike directed to the operation in Kansas without also interrupting service in Missouri?

Mr. Siddens: If Your Honor please, we object to that as calling for a conclusion of the witness.

The Court: Overruled.

Mr. Siddens: We also object to it on the grounds that it seeks to try to show that the order of the Governor and the order of this Court has some effect outside the State of Missouri and, of course, it is manifest that it cannot possibly have such effect and that assumes that situation. We think that is improper.

Mr. Dunau: I think it is quite clear that if it were to have extra territorial effect the concession is that it would be unconstitutional and we are attempting to establish by record here that it necessarily must have extra territorial effect whatever the—

Mr. Siddens: Of course, that's exactly the point. There is no reason under the sun, we must insist that there is [fol. 39] no reason under the sun why the operation can't stop at the state line as far as we are concerned, and the Governor of the State of Missouri and this Court certainly is not trying to operate outside, or undertaking to do anything outside of their jurisdiction.

The Court: I have overruled the objection.

By Mr. Dunau:

Q. Was there answer to that question, sir?

The Witness: May I talk to my personal counsel, Your Honor?

The Court: Yes.

(Colloquy outside the record.)

The Witness: In answer to your question, I will read the telegram Mr. Eyer sent to the Governor upon receipt of the proclamation and seizure orders: "In accordance with your proclamation and executive orders numbers 1 and 2"—this is addressed to the Honorable John M. Dalton, Governor of the State of Missouri—"in accordance with your proclamation and executive orders numbers 1 and 2 issued this date, copies of which have been delivered to me by Mr. Daniel C. Rogers, the plant's equipment and all facilities of Kansas City Transit, Inc., in the State of Missouri will be made available for use and operation by the State of Missouri in the public interest effective at 11:59 p.m. this date. A copy of this telegram has been delivered to Mr. Daniel C. Rogers, your designated agent." [fol. 40] Signed "D. D. Eyer, President, Kansas City Transit, Inc."

Now, what transpired beyond that, I think would be a matter that the Union would set whether they were going to—

By Mr. Dunau:

Q. Mr. Jenison, if a bus driver is operating an interstate route originating in Missouri with the destination in Kansas, can he stop his bus at the Missouri line and state, "From this point forward I am on strike"?

A. I don't—that would be up to him. I don't know that I could answer that.

Q. Could he stop that, could he fail to make the return trip on that bus and still not be striking in Missouri?

A. I don't know.

Q. The answer is you don't know?

A. Yes.

Q. Can he take passengers aboard that bus without informing them that he is stopping at the state line?

A. What information he would give passengers boarding, I have no way of telling.

Q. Would the company permit him, when passengers get on the bus, to say, "This bus goes up to the state line but not into Kansas"?

A. Well, that, of course, you are raising a question. I don't know what the operations would be if we had a situation that involved that question.

Q. Can maintenance employees segregate their work so [fol. 41] that busses are maintained, those busses are maintained which will operate in Missouri but those busses which will operate interstate or in Kansas will not be maintained?

A. You mean—I don't know that, what the arrangements would be, how the busses would be set up exclusively for one state or another. They might. I don't know how they would do that.

Q. With respect to routes wholly within Kansas, is there any way that the bus driver could refuse to take his bus out of the garage which is in Missouri and state, "I am not operating this bus because it is expected to be operated in Kansas"?

A. That would be a determination he would have to make, whether he crossed the picket line at the division or not.

Q. Can there be a picket line so long as an injunction is outstanding enjoining a strike of the Kansas City Transit Company?

A. I can't answer that.

Q. What other means of transportation are available to people in Kansas City, Missouri, transportation other than bus transportation?

A. Transportation other than bus transportation?

Q. That's right.

A. Private automobiles, taxicabs, and so forth.

Q. Do the schools operate a bus service by which children [fol. 42] get to school?

A. There are school busses operated, now whether—I don't believe the schools operate them, I believe they are privately operated but there are school busses in some areas.

Q. Did a two-day strike occur in November against the Kansas City Transit?

A. Yes.

Q. Are you familiar with what the transportation situation was in Missouri during the two-day strike, sir?

A. Just what, what is your question?

Q. Are you familiar with what the transportation situation was in Missouri, Kansas City, Missouri, and other parts of Missouri which are served by the Kansas City Transit, Inc., during the two-day strike?

A. There were no busses of Kansas City Transit, Inc., operating on those two days.

Q. Were people getting to work?

A. I assume that they were.

Q. Were school children getting to school?

Mr. Siddens: I am going to object to that, move it be stricken as being speculation, conclusion of the witness.

The Court: The answer will be stricken.

By Mr. Dunau:

Q. Do you have personal knowledge with respect to whether persons were getting to work on that day?

A. Do I have personal knowledge—my personal opinion? [fol. 43] Q. No, not opinion, sir. Do you have personal knowledge with respect to that?

A. Yes.

Q. Would you relate, based on your personal knowledge, what the situation was with respect to persons getting to work during those two days.

A. On the basis that this strike has been publicized prior to its going into effect, and that there were some rumors that there might be a seizure, I think some people could make arrangements for a short period of time that they might not be able to make if it was of longer duration.

Q. Are you saying that for the two-day period that the strike was on, from your personal knowledge people got to work as they usually did—that is they got to work?

A. They got to work, to my personal knowledge, I know that people got to work.

Q. Did school children get to school?

A. The schools were open, how many were not there, of course, I don't know.

Q. Do you have personal knowledge with respect to that situation?

A. The only personal knowledge I have are ones who go by a different method than Kansas City Transit, Inc.; they got to school those days.

Q. Do you have personal knowledge with respect to whether the employees of the electric, gas and telephone companies got to work on those two days?

[fol. 44] A. Personal knowledge I do not have.

Q. Do you have personal knowledge with respect to whether those employees got to work during those two days?

A. Personal knowledge. I do not have personal knowledge.

Mr. Dunau: I have no other questions, sir.

The Witness: I have a figure here which I believe is in error. I think I gave a figure of 248 miles exclusively in Kansas City, Missouri. I believe the correct figure is 330.

By Mr. Dunau:

Q. 330 would be the correct figure?

A. In place of the 248.

Q. Covering what routes, sir?

A. Miles in Missouri.

Q. Exclusively round trip miles within the State of Missouri would be corrected—

A. To 330 in place of 248. I made a miscalculation on that.

Mr. Dunau: Thank you.

Cross examination.

By Mr. Siddens:

Q. Now, Mr. Jenison, did you testify that the Kansas City Transit, Inc., has a franchise from the State of Missouri, that is a Certificate of Convenience and Necessity to operate a transit system?

A. Yes, the certificate that had originally belonged to Kansas City Public Service Company was transferred to Kansas City Transit.

Q. Was transferred to you and you operate under that franchise?

[fol. 45] A. Yes, sir.

Q. Approximately how many employees does the Kansas City Transit Company have?

A. You mean in the bargaining unit or total?

Q. No, altogether.

A. Altogether is just a little under 1,000; 950.

Q. 950, and in the bargaining unit I think you said there were 800—

A. 817.

Q. 817. Now, you, I think have testified regarding most of the facilities and equipment and the plant that you have. You do have an office, you have divisions and garages and motor busses?

A. Yes, sir.

Q. Now I will ask you whether or not on November 13, 1961, the State of Missouri did by proclamation and order take possession of those facilities?

A. They did at 11:59 p.m. that date.

Q. At that time were you involved in a labor dispute with the defendant Division 1287 of Amalgamated Association?

A. Yes.

Q. Has that dispute been terminated?

A. It has not.

Q. Was there an interruption of transportation service as a result of that dispute?

A. There was a strike for approximately 48 hours from midnight of the 13th to midnight of the 15th.

[fol. 46] Q. And who struck?

A. The members of Local 1287.

Q. Was picketing engaged in by the defendant Division 1287?

A. Yes.

Q. At the headquarters and garages of the company?

A. That is correct.

Q. And service was re-established on what date?

A. At midnight November 15th which would be the start of November 16th.

Q. Now would you please describe to the Court the transportation services that are normally furnished by the Kansas City Transit Company?

A. We operate 32 lines on regular schedules and over regular routes with 401 busses.

Q. Is there any other mass transportation system in Kansas City, Missouri?

A. No, sir, there is not.

Q. And what portion of the transportation services do you provide?

A. It is my opinion in excess of 90 per cent of the public mass transit service is given by the Kansas City Transit.

Q. In what manner do you design these schedules and routes for your system?

A. Our schedules and routes are designed to meet the needs and the demands of the public for transportation to and from their homes, to and from schools, churches, hospitals, places of work, recreation, and so forth. These [fol. 47] are on regular schedules and on regular routes.

Q. To what extent does the company provide mass transportation services to, within and from the central business district of Kansas City, Missouri?

A. About 75 per cent of our business is generated by activity in the central business district.

Q. When you talk about the central business district, what do you mean?

A. That's approximately the 6th Street Trafficway to Truman Road, Oak or McGee Street to Broadway, roughly that area.

Q. That is in Kansas City, Missouri?

A. That's wholly within Kansas City, Missouri. Now, we have some 25,000 persons that are brought into this district before 10:00 a.m. each normal work day and on the basis of the normal average per car, that would amount to about 17,000 additional vehicles required to bring those persons in to the central business district. I think that's—

Q. You mean it would take an additional 17,000 vehicles to bring in the 25,000 approximately persons that you bring down?

A. That we bring in.

Q. Normally?

A. Yes. And I believe—

Q. Is there that many additional parking spaces in the central business district?

A. No, I believe that 17,000 is about 50 per cent of the [fol. 48] total public spaces now available. I don't believe that many additional spaces are available.

Q. You are talking, this is on a week day, you say?

A. Normal week day.

Q. Normal week day. Now, on normal week days do you have a substantial movement of traffic within this central business district?

A. Yes. That's 75 per cent of our business generated by activities in that.

Q. And then what happens at the end of the day?

A. Well, they are transported in at the start of the day and transported out at the end of the day.

Q. Now, you mentioned about hospitals. What transportation service does your company provide with relation to hospitals?

A. Many of our lines serve hospitals direct but we have two specific instances, through the demands and requests, and insistence of the staffs and the general public we instituted a line to the Veterans Hospital which is out east, and we re-routed—

Q. That is out, you are talking about out on—

A. About 35th and Elmwood, roughly.

Q. Just off of Van Brunt?

A. Yes.

Q. That is in Kansas City, Missouri?

A. That is in Kansas City, Missouri. The other specific instance is the General Hospital which is located at about 25th Street and we re-routed out 27th Street line to go down [fol. 49] and offer direct service to the doors of General Hospital.

Q. Were these two lines operating on schedule on November 14th and 15th this year?

A. They were scheduled to operate but did not operate.

Q. Now, you mentioned about schools. What transportation service do you provide in that respect?

A. We have our regular lines which serve the schools and in addition to our regular schedules we add additional service on school days to most of the high schools in Kansas City, Missouri, Southwest, Paseo, Westport, East, Northeast, considerable extra service is operated. Now, when school is not in session that extra service is not operative.

Q. I see. Now, what about your Sunday service? What do you do about that?

A. On Sunday we operate 24 of our 32 lines and we transport approximately 25,000 persons. Our lines that are operated serve the churches; how much of it is church travel, I don't know. There are about 25,000 persons using the transit system on a Sunday.

Q. Now, during the period of the two days of this strike did the company provide any transportation service during that time?

A. No, we did not.

Mr. Siddens: I believe that's all.

Redirect examination.

By Mr. Dunau:

Q. Mr. Jenison, did I understand you correctly to say that the company had a franchise from the City of Kansas [fol. 50] City, Missouri, to operate?

A. Kansas City, Missouri, no.

Q. You were talking then when you talked about a franchise—

A. Public Service Commission of Missouri.

Q. Thank you, sir. You mentioned that it would require 17,000 additional vehicles in to Kansas City, Missouri, in order to carry transportation—in order to carry the normal population into Kansas City, Missouri, if there were no bus transportation. Did I understand that figure correctly, sir?

A. My statement was this: Prior to 10:00 a.m. there are 25,000 persons brought into the central business district of Kansas City, Missouri, and to transport them on the normal ratio of passengers per vehicle, about 17,000 additional vehicles would be required to bring those 25,000 persons into the central business district.

Q. Well, if you have vehicles which could normally seat five or six people and had car pools, why, you could immediately cut that down to about five thousand vehicles, couldn't you, sir?

A. If the average per car got up to that, yes. I am speaking of the normal ratios.

Q. Well, is it correct to speak of normal ratios during a strike situation, sir?

A. Well, I don't know how they would group ride or anything else.

[fol. 51] Q. In fact—what is your personal knowledge with respect to group riding during the two-day strike?

A. I have no personal knowledge of what it was.

Q. Do you have any personal knowledge with respect to whether there was any increase in traffic during the two-day strike?

A. My personal knowledge of it?

Q. Yes, sir.

A. It appeared that there were additional vehicles on the streets, so far as I saw, my personal opinion.

Q. Was the flow of traffic better or worse than it is when the bus transportation system is operating?

A. Traffic flow better or worse?

Q. Yes, during that two-day period, what was the traffic flow?

A. I made no personal observations of that so I couldn't answer that from personal observation.

Q. Are you an expert in mass transportation, sir?

A. In mass transportation I have had 32 years' experience.

Q. Have you had experience in cities other than Kansas City, Missouri?

A. No, sir. My career has been in Kansas City, Missouri.

Q. Now, as an expert in mass transportation, can you tell us what your judgment was of the traffic situation in Kansas City, Missouri, during the two-day strike?

A. I can give you what happened as far as mass transportation was concerned.

Q. We know that mass transportation ceased. As a consequence of the cessation of mass transportation would you give us your judgment as to what the transportation situation was in Kansas City, Missouri, during those two days?

A. As I say, the only thing I am familiar with, there was no public transportation available. Some students got to school, how many I don't know. How many people went to the hospital, I don't know. I see according to the press that there was considerable decline in the amount of business downtown; that I saw in the paper. I don't have the personal knowledge of that.

Now, the reason I didn't make any personal observations, I was not out on the streets those days. I was down at the office until about 2:00 o'clock the night the strike started, came back about 6:00 o'clock and left early so I was not out on the streets observing the traffic. I have heard some things by hearsay.

Q. Did you have any personal knowledge as to whether the people got to VA Hospital during those two days of the strike?

A. Do I have personal knowledge how they got or whether they got? I have no personal knowledge of that, no, sir.

Mr. Dunau: No further questions.

Mr. Siddens: I have no further questions.

By the Court:

Q. Do you have any figures on how many employees [fol: 53] not only reside in Kansas but work exclusively in Kansas as distinguished from the Missouri side?

A. That work exclusively in Kansas? Well, now, we have 11 runs out of our 438 that are runs exclusively in the State of Kansas.

Q. I meant individuals, sir, individual employees.

A. Now, those individuals, I am saying these individuals have two days off a week and the extra men, of course, could be required to work over in Kansas, so there are 11 daily assignments over there, and there could be a varying number of operators who would operate actually over there.

Recross examination.

By Mr. Siddens:

Q. In that connection let me ask you this. Isn't it true, though, that even those that operate exclusively in Kansas, originate in Missouri?

A. They would report for their day's work and end their day's work in Missouri, yes.

Q. At the garages in Missouri?

A. That is right.

Mr. Siddens: That's all.

(Witness excused.)

DANIEL C. ROGERS, was duly sworn:

Direct examination.

By Mr. Dunau:

Q. What is your full name, sir?

A. Daniel C. Rogers.

Q. What is your position, sir?

[fol: 54] A. I am Chairman of the State Board of Mediation of Missouri.

Q. How long have you held that office?

A. I have held that office for a little over ten years.

Q. Would it have been March 15, 1951, when you assumed office, sir?

A. It was March 12, 1951.

Q. Sir, attached to the petition for injunction in this case is a proclamation issued by the Governor of the State of Missouri, John M. Dalton, and an executive order No. 1 issued by the Governor of the State of Missouri. Are you familiar with those two documents, sir?

A. Yes, I am familiar with them. And Executive Order No. 2, did you mention it?

Q. No. I am about to get to Executive Order No. 2, sir.

A. All right.

Q. Was there an additional executive order which Governor Dalton issued pertaining to this—

A. Yes, Executive Order No. 2.

(Defendants' Exhibit 1 marked for identification.)

By Mr. Dunau:

Q. Sir, do you recognize that as a true copy of the Executive Order No. 2 which was issued by the Governor?

A. Yes, I do.

Mr. Siddens: Why don't you use these? Here are certified copies.

Mr. Dunau: All right. Fine.

May it be stipulated to receive in evidence as Defendants' [fol. 55] Exhibits 1, 2 and 3 proclamation, Executive Order No. 1 and Executive Order No. 2?

The Court: They will be received.

Mr. Dunau: We will withdraw the copy that has been marked previously as Defendants' Exhibit No. 1.

By Mr. Dunau:

Q. What action did you take on the basis of the proclamation and Executive Orders 1 and 2?

A. Well, my first observation was, of course, that immediately the proclamation and executive orders became effective, was that there was no mass transportation.

Q. No, I am sorry, sir, you must have misunderstood what I asked. What I want to ask, sir, is what acts did you perform in your capacity as the agent appointed by the Governor?

A. There being no mass transportation as of midnight October 31st I recommended that action be taken to get transportation again on the streets in Kansas City.

Q. Well, what did you do specifically?

A. I contacted the Governor's office and the Attorney General's office, as I had heretofore, and as a result of my action this step was taken to restore mass transportation to the streets of Kansas City as expeditiously as possible.

Q. What was done by you to restore mass transportation?

A. Well, this injunction proceeding that is now before the Court was instituted. It might as well have been, I [fol. 56] presume, filed in the name of the Governor's agent or in the name of the Governor as well as in the name of the State of Missouri as a plaintiff.

Q. Mr. Rogers, what did you do in order to take possession of the plant facilities and equipment of the Kansas City Transit Company?

A. I went to the company office as quickly as I could after the papers were delivered to me by a patrolman, and delivered them to the President of the company, as I have done on numerous occasions heretofore, and informed him that the property of the company was now subject to the police power and that it should from that moment of seizure on be available for operation in the public interest.

Q. Now, did your act of possession involve more than delivering the documents to the President of the company and informing him that he was now to operate the system under the police power of the State of Missouri?

A. Well, in my opinion that was sufficient when I gave him that document which amounted to the exercise of the police power in the taking of possession, it was not necessary, surely, for me to exercise any physical means of activity over the property in order to bring it under possession of the agent of the Governor. I think the papers spoke for themselves and the management understood that they were, that the property was available, and so immedi-

[fol. 57] ately informed the Governor, as you have heard in the telegram that was read a while ago.

Q. The answer, then, to my question is that all you did is what you have described?

A. Yes. I at the same time made an effort to deliver a set of the papers to the President of the union. I had some difficulty in locating him. As a matter of fact, I never did locate him. The patrolman finally gave the same papers to some of the men who were at 9th and Brighton.

Q. Were you with the patrolman when that was done?

A. Yes, I was with the patrolman when they were delivered.

Q. Is any employee of the company represented by Division 1287 Amalgamated Association an employee of the State of Missouri?

A. Well, as I understand, being an employee of the State of Missouri, the answer is no except as the State of Missouri is exercising the police power over these employees. If that constitutes them as an employee of the State of Missouri, why, then; that's in my opinion a legal question and I leave it at that.

Q. Well, after possession was taken, did the employees remain employees of the Kansas City Transit, Inc.?

A. Well, again, that's a legal question. In my opinion they remained at their posts of duty under the force of the police power of the State to continue their employment by [fol. 58] the Kansas City Transit in order that mass transportation could continue on the streets of Kansas City.

Q. Are these employees paid by you, sir?

A. They are not.

Q. Are they paid by anybody on your behalf?

A. Under the scope of the police power as applicable here, they are paid, of course, from the treasury of the Kansas City Transit Company as they have normally been paid heretofore.

Q. Has anybody but the Kansas City Transit Company paid them?

A. Well, I would say no.

Q. Do you pay social security benefits on behalf of these employees?

A. The Kansas City Transit does so.

Q. Do you?

A. The State does not.

Q. Do you pay unemployment compensation on behalf of these employees?

A. The State does not.

Q. Does the Transit Company do that?

A. The Kansas City Transit does, under the directions of the police power as laid out in these papers, the proclamation and Executive Orders 1 and 2.

Q. Well, prior to the proclamation and Executive Orders 1 and 2 did Kansas City Transit pay social security benefits?

A. Well, if they were required to under the law, I presume they did.

[fol. 59] Q. The continuation of such payments, does that have anything to do with the proclamation or Executive Orders 1 and 2?

A. The continuation of the payments is contemplated under the terms of the Executive Order No. 2.

Q. Does the State of Missouri make those payments, sir?

A. The State of Missouri does not.

Q. Does the State of Missouri contribute to the unemployment compensation benefits of these employees?

A. The State of Missouri does not.

Q. Does the State of Missouri pay the workmen's compensation claims of these employees?

A. The State of Missouri does not. In Executive Order No. 3 the

Q. Sir, would please answer my question?

A. Well, I am answering your question.

Q. Well, you answered it does not and that I think is an answer to my question.

The Court: He can explain it.

The Witness: I think Executive Order No. 2 clearly answers your question on all of these inquiries. Section 3 of the Executive Order No. 2 reads as follows: "All rules and regulations of the aforesaid utility governing the internal management and organization of the company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of [fol. 60] Missouri."

By Mr. Dunau:

Q. Is it your opinion, sir, that under the authority of the King-Thompson Act the State of Missouri could require Kansas City Transit not to pay social security benefits?

Mr. Siddens: I object to that, calling for a legal conclusion.

The Court: Sustained.

The Witness: Well,—

The Court: Sustained.

The Witness: All right.

By Mr. Dunau:

Q. Does the State of Missouri direct these employees in the performance of their work?

A. Under the scope of the police power that is imposed upon the employees and the company, they are required to continue their employment.

Q. Does the State of Missouri direct these employees in the performance of their work?

A. The same answer would be pertinent.

Q. I suggest that the answer is not responsive to my question, sir. Do you direct these employees in the performance of their work?

A. I do not direct the employees. The management is subject to the police power of the State of Missouri and with reference to the portion of Executive Order No. 2 [fol. 61] that I have just read to you these operations of management remain normal as heretofore.

Q. Does anybody but a supervisor or an official of the Kansas City Transit, Inc., direct these employees in the performance of their work?

A. They so direct them in response to these three documents.

Q. Do you tell these employees when to report to work?

A. I do not personally. I have the management do that under the scope of the police power, that is imposes the duty on management to do that itself as heretofore.

Q. Do you tell them where to report to work?

A. The answer is no.

Q. Do you tell them what to do?

A. I think I have answered that question generally.

Q. What is the answer, sir, yes or no?

A. The answer is that they perform their services under the scope of the police power as laid down in these Executive Orders.

Q. Do you personally tell any of the people what to do?

A. I do not personally tell them, no. I don't suppose the President of the company personally tells them either.

Q. Do you direct anybody within the company to tell them what to do?

A. I do not from day to day. When I delivered the papers I let it be known that management was subject to the police powers as laid down in these three documents, [fol. 62] and management being intelligent enough to understand what the meaning of that was, it is not necessary for me in detail to direct management on how to run the company.

Q. Do you hire any employees, sir?

A. I do not.

Q. Do you discharge any employees?

A. I do not personally.

Q. You do not?

A. Personally I do not.

Q. Do you discipline any employees?

A. I do not personally. They are disciplined according to the existing rules and regulations as has been in existence for a long time and as are affirmed by the Executive Order No. 2 which I read a moment ago.

Q. Is there any aspect of the employment relationship that you control?

A. No, except to the extent that I am the Governor's agent and of the company and all of its activities are subject to the scope of the police power as laid down in these three documents.

Q. During the period of seizure have you consulted with any officer of the company with respect to the employment relationship of any employee?

A. No, I have not. I don't feel that's a part of my duty as an agent of the Governor.

Q. Do you expend any funds of the State of Missouri to [fol. 63] operate the Kansas City Transit?

A. I do not. I do not think that's within the scope of the Executive Orders issued, No. 2 of which particularly applies to me.

Q. Did you take possession of any of the company's money?

A. Within the language of the three orders, that money is subject to the disposition according to the police power as defined in these three Executive Orders.

Q. Do I understand you to say that under the—that you are authorized by virtue of the proclamation and Executive Orders Nos. 1 and 2 to spend the company's money?

A. No, you should not so understand. I did not state it that way.

Q. Then you do not have any authority to spend the company's money?

A. I do not spend the company's money personally, the company's money should be spent as it has been spent heretofore in maintaining mass transportation in the public interest under the laws of Missouri, including the Public Service Commission law since 1913.

Q. Does anybody but an officer of the Kansas City Transit Company spend any of the company's money?

A. That I don't know. I presume not. I don't believe anyone but an officer of the company would have any authority to be spending any of the company's money.

Q. Did you take possession of any of the company's bank accounts?

[fol. 64] A. Well, in the sense that you are seeking an answer, the answer is no, but the company's bank accounts and the company's property and the company's operations are all subject to the police power as spelled out in these three documents.

Q. Do you sign any of the company's checks?

A. I do not.

Q. Do you collect any of the revenue received from the operation of the company's facilities?

A. I do not. The bus operators collect the revenue and

turn it in to other personnel of the company. I don't suppose the President of the company even sees the revenue.

Q. Does anybody but an officer or an employee of the Kansas City Transit Company receive any of the funds of the company?

A. I presume not.

Q. Are any reports made to you with respect to the funds received by the company?

A. No. I do not require it. I do not feel it necessary.

Q. Have you asked for any reports?

A. I have not. The company is a responsible company and I assume that it will operate its property responsibly as it has in years heretofore and as is expected of them under the scope of these three documents.

Q. Do you make any purchases for the company?

A. I do not, personally. I don't suppose the President does.

[fol. 65] Q. Does anybody but an officer or employee of Kansas City Transit make purchases for the company?

A. I would hope not. I cannot answer personally.

Q. Does any agent of yours make purchases for the company?

A. No. I have no agent—

Q. Do you pay any of the bills—

A. —except to the extent that under the police power the officers of the company may be deemed to be my agents to whom I delegate back all of the authority of operating the company.

Q. Do you pay any of the bills of the company?

A. I do not personally. Management is supposed to take care of that under the authority of the police power, as it has normally done so for years and years.

Q. Other than delivery of the three documents, the proclamation and the Executive Orders 1 and 2, have you done anything with respect to the operation of the company?

A. No.

Q. Was any of the property of the company conveyed, transferred or otherwise turned over to you?

A. Except to the extent that it was as a matter of law by these three documents.

Q. Do you participate in the management of the company?

A. I allow that to remain as the portion of Executive Order No. 3 which I read to you, I allow that to remain as [fol. 66] a delegated authority back to the normal management.

Q. Mr. Rogers, have you until now participated in the management of the company?

A. Well, the until now is not pertinent.

Q. Until this moment, because we want to eliminate any conjecture for the future, at this moment, from the time that you delivered these three documents, to a quarter past 3:00, have you participated in the management of the company?

A. As outlined in these three documents.

Q. Are you consulted by the company's Board of Directors or officers as to the conduct of the business?

A. No, because that responsibility is theirs.

Q. Does the management of the company remain exclusively with its officers and the Board of Directors?

A. Yes, under State supervision as intended and designed in these three documents.

Q. As a result of your delivery of these three documents to the President of the company has there been any change in the conduct of the business by the company?

A. No major change, I would assume, but that I do not know.

Q. What minor changes, sir?

A. Beg your pardon?

Q. What minor changes?

A. None that I know of.

Q. Then there would be no major or minor changes that you know of?

A. Well, that would be my judgment.

[fol. 67] Q. So far as you know?

A. So far as I know the company is operating now just as it was two weeks ago before the strike.

Q. Now, during the course of the collective bargaining negotiations during the year of 1961 between the Kansas City Transit and Division 1287, did there come a time when the Missouri State Board of Mediation was informed of the existence of the dispute?

A. The Missouri State Board of Mediation takes jurisdiction under the King-Thompson Act when a labor dispute arises between the parties and the law provides that at the termination of a contract each party shall give the other notice in writing of the changes it desires to make in the contract and that copies of those changes shall be filed with the State Board of Mediation 60 days prior to the termination of this contract at midnight on October 31, 1961, which was about August 29th and the 30th, the State Board of Mediation received documents from each management and labor constituting their exchange of requests for changes in the contract, and they were filed in my office in Jefferson City as required by the King-Thompson Act, and in that manner the Act took jurisdiction of this dispute.

Q. Did there come a time during the course of the negotiations when you were informed that the parties were deadlocked?

[fol. 68] A. Well, it is not necessary that the parties inform me.

Q. Sir, the question was did there come a time in the course of negotiations when you were informed of a deadlock between the parties? The answer is either yes or no.

A. Well, yes, management notified me of a deadlock. I had a letter from Mr. Hargus, President of the union, in October addressed to Mr. Eyer, the President, in which Mr. Hargus at some length informed the President of Kansas City Transit that the parties had been in negotiations for a considerable period of time and that it was apparent that they were making no progress and that the company from the beginning had declined to make a proper offer of wages, and that he considered the situation at a deadlock, and he reminded Mr. Eyer, the President of the company, that the contract provides for arbitration, and in this letter, a copy of which he voluntarily sent to my office, he was urging Mr. Eyer, the importance of arbitrating this labor dispute and he pointed out that it appeared that we were, that the parties were approaching October 31st midnight at the termination hour of the contract without a contract and that Mr. Eyer would have to be responsible for what injury there may be to the public interest after

midnight October 31st. I have a copy of that letter here in my file before me.

The Court: May I interrupt, please? We will have a [fol. 69] recess for five or ten minutes.

(Recess)

The Witness: If the Court please, in response to the question that was asked me just before recess whether either of the parties contacted my office with reference to the necessity for mediation services, I didn't quite finish my statement. I would like to add to that.

Mr. Hargus did not write to me directly. The copy of the letter that I mentioned clearly was addressed to Mr. Eyer but Mr. Hargus did send me a copy of that for my information, as is customary.

Now, in addition, either just before or just after this same time, which was roughly around the middle of October, Mr. Hargus called me by long distance telephone and he asked me if he could meet me in my office in Jefferson City the following Friday and I told him I'd be glad to do so, or some day in the next week. I have forgotten whether it was Friday or not, I told him I would be glad to have him come. I was in my office at the designated date and time and Mr. Hargus brought Mr. John Rawlings with him. Mr. Rawlings is the President of the Missouri Federation of Labor AF of L-CIO. Mr. Hargus in that informal conference in my office outlined the facts as I have stated them in this letter that the parties were at an impasse, management was making no offer whatsoever, and that they were re-[fol. 70] fusing to arbitrate, and he was seeking my general knowledge as a lawyer and as Chairman of the Board for ten years, the meaning of that provision of the King-Thompson Act which says that all labor agreements shall be presumed to continue in full force and effect until such time as the parties give each other notice of desire to make changes in the contract, copies of which shall be filed with the State Board of Mediation. Mr. Hargus was exploring the thought that the King-Thompson Act itself required the provisions of the labor agreement between the parties could not be terminated by management as of midnight of

October 31, 1961. Management has given in a letter to the union notice of its intention to terminate the contract as of midnight October 31, 1961. Management has done that heretofore, the purpose being to avoid its provision in the contract to arbitrate even contract matters, management feeling that it is the duty of both parties to negotiate up to midnight October 31st, and if there at that moment they fail to do so, its notice of termination goes into effect and therefore the parties continue to negotiate after the termination of the contract, that management then will be rid of its contractual duty to arbitrate because the contract will not be in effect.

Mr. Hargus was seeking to explore the thought with me that management's letter seeking to terminate the contract [fol. 71] as of midnight October 31, 1961, was by force and effect of the King-Thompson law overridden and that therefore the overriding effect of the King-Thompson Act continued the contract in effect on and after midnight October 31st, 1961, and that therefore coming into November without a contract, or coming into November without the contract having been negotiated to a settlement, that management at that time then would not have succeeded in revoking its contract and thereby avoiding its contractual duties to arbitrate this contract provision. I listened to Mr. Hargus and to Mr. Rawlings with a great deal of courtesy, certainly, and even sympathy. I do not seek to interpret the King-Thompson Act in that respect because I plainly told them then and I have done so by a letter subsequently to both Mr. Hargus and to Mr. Eyer, President of the company, that the thing that Mr. Hargus advanced was really a question of law and not for me to determine but something to be left to the courts. I told Mr. Hargus that if he should press the question in conference when I would ultimately come to Kansas City to try to get the parties together in the event they failed to do so themselves that in the presence of management would take a similar sympathetic position towards the overall intention of the King-Thompson Act to maintain peace between the parties and as I have said here publicly I think arbitration even of a wage issue [fol. 72] is better than a strike. That was sort of the way I expressed my thought on it one way or the other.

Now, then, I told Mr. Hargus that if he should raise this issue when I arrived in Kansas City I would be glad at that time to discuss it with him in the presence of management similar to the manner in which I had discussed it with him and Mr. John Bawlings.

Now, I did come to Kansas City for the first time on November 30th—

Q. Sir,—

A: I beg your pardon—October 30th, and I knew at that time that the parties were at an impasse and I had so advised the Governor and I was surprised when I walked into the room over at the Federal Mediation and Conciliation Service that Mr. Hargus expressed opposition to my sitting down to be present during the negotiations. He conferred with Mr. Otto Debate First Vice-President of the International Association from Washington, they took a recess and even though Mr. O'Connell had said that it was the policy of the Federal Mediation and Conciliation Service to co-operate with State agencies that had similar mediation duties, and that I would be received accordingly under that policy, then Mr. Hargus and Mr. Debate left the room and he came back and handed me a letter addressed to whom it may concern, and I have that letter here in my file, too, substantially that letter points out that the Kansas City [fol. 73] Transit is under the jurisdiction of the Interstate Commerce Commission and the Labor Management Relations Act and that the two Federal laws exempt—preempt the field in labor relations and that there is no place for the State to make its intrusion into this labor dispute. And I sat there and read the letter and then Mr. Hargus asked me point blank, "Are you going to stay or are you going to leave?" And I said, "I'm going to stay, Mr. Hargus."

Now, I give you that as an incident to answer broadly the question as to whether or not I had been and to what extent sought with reference to the pending labor dispute and I continued to come and go at the Federal Mediation and Conciliation Service from that day on for the remainder of the meetings that were held there for five or six more, I suppose.

Q. Was it October 30th, the first meeting you attended at which the Federal Mediation and Conciliation Service was assisting?

A. Yes, they had held two or three meetings prior to that, I understood.

Q. And you attended the session at which the Federal Mediation and Conciliation Service was attempting to mediate this dispute, do I understand five or six days after October 30th, sir?

[fol. 74] A. Yes. The Federal Act so provides—

Q. Sir, just answer my question.

A. Well, I will but you ought to know that the Federal Act provides that there shall be co-operation between them and that the director may even take steps to make such formal arrangements with the State, and even remain away themselves in those situations in which interstate commerce is affected in a minor way. The Taft-Hartley Act itself so provides. And it is in that spirit in which there has been the finest of co-operation in mediation between the Federal Service and the State Board of Mediation.

Now, obviously—I want to answer that question a little further—obviously I did stay away until October the 30th and until the next day was the strike deadline and I had notice of it by Mr. Hargus's letter that I had received, as I have explained, two weeks before, and I felt that if I were going to perform any service whatsoever under the authority vested in the State Board of Mediation under the King-Thompson Act that surely come October 30th it was time for me to get to Kansas City, and I did under the circumstances as I have described.

Q. Mr. Rogers, after you sat in on the negotiations for a number of days did there come a time when you informed the parties that you were formally convening to the Missouri State Board of Mediation to conduct a hearing into [fol. 75] the dispute? Yes or no?

A. On November 10th Mr. Hargus—

Q. Sir, if you would permit me to conduct the examination we could probably get through.

The Witness: He wants me to answer as he wants. I want to answer so the Court will have an understanding.

The Court: You may answer any way you prefer just so you answer the questions.

A. On October 10th—

By Mr. Dunau:

Q. October 10th, sir?

A. November 10th.

Q. Thank you.

A. On November 10th Mr. Hargus handed the parties at the Federal Mediation and Conciliation office a so-called strike notice in which he pointed out that at midnight on November 13th all employees were instructed to cease work for the Kansas City Transit, and that meant a strike, it was clearly that, and that he was to meet them the following Monday, this was on Friday, he would meet them on the following Monday, all day in three meetings and give them strike instructions. Well, again that emphasized the fact that we were confronted with an emergency at that time and having failed to reach an agreement either in their own conferences, thirteen or fourteen of them before they even came into the Federal Mediation and Conciliation Service, and having failed before the Federal Mediation and Conciliation Service for two or three conferences, and they had admitted that on that day and prior to that day that they were at a deadlock, the union demanding 38 cents across-the-board increase, and a 48-cent fringe issue, which made a total package of 86 cents, and management calling that fantastic and admitting on its part that the offer that it did make, and made it in my presence, of a half-cent for the first year, a half-cent for the second year, a half-cent for the third year for a three-year contract, management admitted that that was a ridiculous counter-proposal, and those were the words that were used, those are not my words, fantastic and ridiculous, they are the words that management used in describing the situation that existed between the parties. Well, here came this strike notice then and I felt certainly if I were going to do anything other than just sit around and do nothing that it was time to act, and then the answer is yes, I at that time very affirmatively urged the union not to strike, of course, in

the first place, to submit the matter, if they would, to a public hearing panel; we discussed that, I didn't urge it on them; that they might, management might reconsider its refusal to arbitrate, and all of those things failing, this was practically the first time now that I had spoken in the meetings at all, I urged then that the parties surely must come [fol. 77] before the full membership of the State Board of Mediation with the purpose of giving us an opportunity to see if we could aid them in settling the dispute.

Q. When was that, sir?

A. Well, this particular time was on the 10th of November that I am speaking of—no, it was on—no, I beg your pardon—it was earlier than the 10th of November.

Q. Was it November 6th, sir?

A. Yes, let's say it was November 6th because I did assemble the Board for November the 8th and the parties came over to a neutral place that I had provided at the Hotel President as a neutral place, and Mr. Hargus in that situation came in, both sides came in, and we were not able to take up the merits of the dispute because Mr. Hargus sought to condition the proceedings of the Board by giving him a written statement that they in the first place would not be public; we discussed that, I told him it is a public Board, I couldn't agree that if someone showed up and wanted to come in that I would have to close the doors to them; I explained that to him; I told him that as a rule no one did show up, I felt that it would be a private conference but that I was not going to give him any written statement that we would not—that we would exclude any members of the press or the public.

Secondly, he insisted that I give him a written statement [fol. 78] that the Board would not make any recommendations and I told him I would not give him a written statement that the Board would not make any recommendations because I have always felt that if the Board is going to be useful at all it should sit with the parties and with the experience that the men on our Board have had in labor matters I felt that a time might come when it would be helpful to the parties if the Board did make a recommendation. Well, under those circumstances then Mr. Hargus went out and conferred with Mr. Debate some more, Mr. Debate was there.

Q. Who is Mr. Debate?

A. Mr. Debate is the First Vice-President of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America from the Washington office, as I understand it. Mr. Debate was there and they went out and conferred. When they came back Mr. Hargus handed me a letter in which he stated substantially that as a condition for the union remaining with the State Board of Mediation that the Board would have to give him a written statement disclaiming our authority to do either of these two things that I have just mentioned, either hold the meeting public or make any recommendations. I told him orally again that I would not do so. He insisted that I give him a letter to that effect. I did not have any particular objection to giving him a letter to that effect and I asked for [fol. 79] a recess on our part then in order that the Board and I might formulate such a letter and I do have that letter in my file in which, in response to his letter I replied that the Board would not give him a written guarantee that we would neither admit members of the public to the hearing or that we would refrain from making any recommendations. Mr. Hargus in his letter and his discussion, he confused between recommendations and mediation. He was taking the position that—

Q. He confused or he differentiated, sir?

A. Well, I say he was confused because in my understanding of recommendations in the spirit of the King-Thompson Act, making recommendations is only mediation, it isn't anything like arbitration. The parties well know and I always emphasize that if I make a recommendation it is only a recommendation and they can throw it in the wastebasket, it is just something to put before them to let them see whether or not it constitutes the basis of something on which they would like to make a start for responsible bargaining. And up to that time, of course, Mr. Hargus had complained, and with merit, that management had not given them a responsible offer, having informed the Governor of that, Governor Dalton himself sent a pretty strongly worded letter to management in which he urged them to disregard purely technical procedures in reference to collective bargaining and make this union a respon-

sible offer. And that's what we were trying to get done, and it never was done, and the Board was willing to make a responsible recommendation of its own.

Now, Mr. Hargus left the meeting. I don't want to say walked out but anyway he left the meeting and it was terminated that way. I talked with management awhile and let them go and then the strike situation came along on the 10th and I got in touch with the Governor again, the Governor sent strong telegrams to both parties and then I called the Board back for the next day which was Saturday and asked the parties, invited them both, I have never issued a subpoena yet in 10 years, I invited the parties both to come back and let's take another try. They came back on the morning of the 10th and Mr. Hargus, he would not come in to joint conference with management but he did come in alone with the union group, Mr. Debate along with him, and we discussed the situation, and he said it would be futile for me to expect them to come in in view of what had happened three days before where they refused to come in, except that we would give them this written statement, and I told him again I would not do that, so he said, "Well, I suppose that is the end of it then", and to which I agreed, and again he left, and the Board and I then stayed there, we dismissed the company, the Board and I stayed there, [fol. 81] and I reviewed the whole dispute with them carefully and as a result we did make a report and recommendations to the parties, a copy of which I have got the original here in my file as we wrote it out in my handwriting and substantially we pointed out that the parties had failed to reach an agreement in their own conferences or in mediation conferences and that therefore on its own the Board wished to state to the parties that its mediation services were available if they would come in before the Board and present their cases fully on both sides, that the Board would like to hear the issues and make suggestions to them as we might proceed in that manner, or if they would come before the Board and present their cases on both sides the Board would be glad then to go into an executive session and to make recommendations which were not binding on the parties but to give them some basis, the best of our judgment on what they might take as a starting point for negotiations.

I also pointed out that the Board recommended that, thirdly, that the parties should go back and reconsider their positions on arbitration. We took the position that arbitration was better than a strike.

Then I wound that up with Board approval and they were all busily engaged in helping me phrase this, and thinking it through because they were all men with lots of [fol. 82] long, long years of experience, two labor and two management, much more than I have had. Then we said, "The Board on its own responsibility recommends the following settlement of the wage dispute in a two-year contract: Four cents per hour across-the-board to all employees, increase effective November 1, 1961, six cents across-the-board increase effective January 1, 1962, and eight cents across-the-board to all employees effective November 1, 1962."

Now, the company had contended that it needed to go to the Public Service Commission to get relief and we put that four cents, which was an easy start, on November 1, 1961, and did not start the additional six cents until January 1st in order to give management time to get to the Public Service Commission before January 1st to see what relief they could get, which would make a full ten cents increase then starting January 1, 1962, then another eight cents the following November or a total package of eighteen cents over a three-year period. And then we recommended, not having opportunity to go into the numerous other issues that were so debatable between the parties and so vexing between them, we recommended that they drop all of those or that we disregard them because we felt that if we were going to make a recommendation on a package that would cost the company money we should hold it to wages only, and that's what we did. Now, we delivered copies of that to each party, we delivered copies of it to [fol. 83] the President and it was pretty fully publicized. And that was the extent up to that time of our efforts. The strike came on the 13th. We have pretty well covered the seizure. After these preliminaries—

Q. Sir, before you go on, what was the date on which you issued this report?

A. I believe it was November 11th. It was at our second Board meeting.

Q. It was November the 11th, sir?

A. Yes. It was real critical at that time because we had already received the strike notice from the union and we were doing our dead level best to try to get this thing off dead center, somebody get a responsible offer, somebody make a responsible move to get this strike settled before it took place at midnight. Well, it did take place at midnight, and then after these preliminaries were filed in this court on the 15th, I believe it was, and over in the Federal Court on the 14th, and we came and sat here in chambers with His Honor, Judge Murphy, and Judge Becker over in the other court, and after those preliminaries were out of the way, I made one more effort to try to get something done, I called the parties to come before me then at the Hotel President at 10:00 a.m. November 21st, and I talked with Mr. Hargus on the phone, I wasn't at all satisfied that he [fol. 84] was going to come, I talked with management on the phone, they said they would come. I thought I would place myself on record by sending each of them a telegram, which I did, and sent them a telegram to appear before me on the morning of November 21st at 10:00 a.m. Management showed up. The union didn't show up. And that was the last effort that I made. Then on the 22nd, which was the next day, in some manner a meeting was scheduled before the Federal Mediation and Conciliation Service. I felt that having done my best in the manner in which I have now pretty well described that I would not go over there, that if they could get together now after all of the parleying that we had done to try to get them to move and if management could go over there and make a responsible offer and they could start out on negotiations on their own with the Federal Mediation and Conciliation Service which they had failed heretofore to do, I'd be glad to see them do it. So they did meet on the 21st and management did make an offer over there, they made a 15-cent offer over a period of two years and there is where the thing stands so far as I am concerned.

And this just about reviews, Your Honor, my mediation efforts in the dispute.

Q. Sir, do you have any information in your capacity as the Government's agent who took possession of the property

[fol. 85]. as to what the transportation situation was in Kansas City, Missouri, during the two-day period of the strike?

A. Well, as to the actual condition on the streets, it would be hearsay because I was more or less tied down to my hotel room with telephone calls on innumerable questions that arise in relation to my position in a situation like this, and I was not out on the streets, so I do not have any personal knowledge of the condition of transportation out on the streets.

Q. Well, do you have any information that came to you in the course of your duties as the agent of the Governor pertaining to the transportation situation during the course of the two-day strike?

A. Well, if I follow your inquiry it is the same, I do not have any personal information.

Q. Do you have any information, sir?

Mr. Siddens: Calling for hearsay, I object to that.

The Witness: Well, I will answer him. Let me think.

The Court: What he knows of his own knowledge.

The Witness: Yes, I was going to say of my own knowledge I really don't have any.

Mr. Dunau: That's all, sir.

The Witness: Well, I was going to say in that respect, Your Honor, my own view is that where the King-[fol. 86] Thompson Act intends to implement and make secure to the people safe, adequate and continuous public utility service, but the King-Thompson Act was merely an appendage of the Public Service Commission Act 50 years later, 45 years later, or whatever it is, and that inasmuch as the legislature not only back in 1913 but again in the King-Thompson Act in 1947 declared light, heat, water, transportation, communications, sanitation, essentials of the people. Now, my view is that when one of those essentials of the people as has been legislatively found, now, the policy-making agency of this State, are totally denied a community, that that prima facie constitutes jeopardy to the public interest, health and welfare, as is later set forth in the King-Thompson Act, as the basis for taking possession by the Governor on the theory that if it is and has been found to be an essential of the people it isn't neces-

sary to sit here and prove it. The legislature made that finding, legislative finding 14 years ago and therefore, if we can look out on the streets and know that there is a total cessation or withdrawal by means of a strike of that essential of the people, then it seems to me the Governor has his reasons for invoking his authority. I don't think he has to wait until he hears an outcry from the Mayor and from the people and how they are being injured and failing to get to work and so on. I think the thing speaks for itself [fol. 87] in the law and as a matter of law it seems to me the legislature has answered the question for the purpose of this interlocutory injunction at least.

Now, if Your Honor were considering whether or not communications or transportation is constitutionally in this Act, why, then, that might be something that would come at a later time. But at this time the legislature has already found it to be an essential of the people and it doesn't seem to me that the Court would seek to set aside a 14-year-old statute of the legislature exercising the police power and having been generally at least declared constitutional by the Supreme Court of Missouri in a unanimous opinion twice. It doesn't—well, the first time in the Pigg case it didn't get into this question of seizure.

Mr. Manning: Your Honor, I hope we are not being bound by this speech.

The Witness: Well, it's—I am answering his question as to whether or not—

Mr. Manning: You are not answering any question now.

The Witness: Well, wait a minute, now. I am answering his question as to whether or not there appeared to be any reason for seizure and I think my answer is entirely pertinent to the question.

Mr. Dunau: I don't think I asked any such a question [fol. 88] but I have no objection to doing such a good job.

The Witness: Well, I am glad you have not.

Cross examination.

By Mr. Siddens:

Q. Mr. Rogers, I have a few questions I want to ask. Some mention I think was made regarding the matter of

whether or not you had taken any steps since, and what steps you had taken since you have taken possession on behalf of the Governor of the State of Missouri of the Kansas City Transit. I would like to ask you in that connection if your understanding is of your orders that if at any time you think that it is necessary for you to take steps or further action in connection of the operation or management of that company, you have the power to do so.

Mr. Dunau: Objection, Your Honor, the question calls for a legal conclusion as to what authority is conferred by the proclamation and these Executive Orders.

The Court: Overruled.

The Witness: We have gone into that, of course, I have pointed out the three sections of Executive Order No. 2 and I will re-state it. Of course, Executive Order No. 2—

By Mr. Siddens:

Q. Now, the question I asked you is as to the future.

A. Yes, I am going to answer, yes, sir.

Q. You have heretofore answered what you have done?

[fol. 89] A. Yes, that's right.

Q. Now, I asked you only as to the future.

A. All right.

Q. What you think you can do.

A. All right. Well, first, I ought to say this, that certainly if management should provoke a lock-out tomorrow, we would probably be up here with a proper request for restraining management or if tomorrow morning I would find that the office down there has closed and the management had all gone and the employees were gone and therefore there was no management to fulfill the provisions of Executive Order No. 2, Section 3, why, then I feel confident that I or someone would have the authority under these documents to take proper steps against management and see to it that management got back on the job and stayed on the job and performed their duty in the public interest as they are required to under the Public Service Commission Act. Of course, I feel that both management

and employees are impressed with that responsibility in the Public Service Commission Act and management cannot abandon its duties and certainly, under the Public Service Commission Act, and certainly it cannot perform them without its employees and so the Public Service Commission Act as in the public interest is impressed upon the employees as well as upon management to furnish safe, continuous and adequate service. And, therefore, under the spirit of the Public Service Commission Act employees may not strike to close down a public utility. And this is only an implementation, as it had a while ago, for the situation that the legislature had seen in 1913 when there were no unions that could strike and lay a whole community in a state of paralysis. So they came along in 1947 and supplemented the King-Thompson Act—supplemented the Public Service Commission Act with the King-Thompson Act—

Q. Mr. Rogers, I want to direct your attention to the question I asked you.

A. Yes, all right.

Q. The question is if circumstances should arise that you think that you have to interfere, there is some reason why you need to interfere in the management, control or operation of this company, do you think under the power that you have conferred on you by the Governor that you can do that?

A. Absolutely.

Q. All right. Now, then, I want to ask you this. As I understood you to make the statement prior to the strike and prior to the Governor's seizure, the union had made a demand totalling 86 cents; is that correct?

A. That's correct.

Q. And at that time or prior to the strike and before the Governor's seizure, the management had made an offer of a half cent for each year for three years. Is that true?

A. 91] A. That is correct.

Q. And that is where the negotiations stood at the time that the Governor took possession?

A. That's right, and had stood that way for ten days.

Q. Now, I would like to ask you, Mr. Rogers, if you are a defendant in a suit filed by Division No. 1287 Amal-

gamated Association in the United States District Court for the Western District of Missouri?

A. I am and each member of my Board is also a defendant, along with the Governor.

Q. And that suit was filed on November the 14th?

A. That's correct.

Q. And you were served in that action?

A. That's right.

Q. In which the same issues, or at least some of the same issues, are involved in it that are involved in this lawsuit?

A. I would say the identical issues.

Q. Now, I would like to ask you, Mr. Rogers, who are the members, you mentioned, you referred to the members of the State Board of Mediation, just name them, who they are.

A. Well, the two labor members are Mr. Al Fults of St. Louis. He has been with the Brotherhood of Locomotive Engineers probably 40 to 50 years, had long years of experience in grievance and mediation work in railroads. Mr. [fol. 92] Charles Bibbs of St. Joseph who was business manager of the International Brotherhood of Electrical Workers of the St. Joe Light and Power Company for a long number of years and worked as a union member there for most of his life. A management member is Mr. Truman Henry out here at Lee's Summit. He is in charge of personnel and the Vice-President of the Missouri Public Service Company here that has the big office out on 50 Highway. Mr. Henry came up from the ranks as a union man for many years and attained his present position. He does all the negotiating for the company. And the other management member is Mr. J. Ray Lambright. Mr. Lambright is the manager of the Northwest Missouri Co-Operative Association at Savannah, Missouri. We have disputes in REA's and until his appointment we had never had a man from the REA on the Board so Governor Dalton and I talked it over and thought it would be well by this time to have an REA representative on the Board, and Mr. Lambright is on the Board. And I am the public member of the Board and was appointed March 12, 1951.

Mr. Siddens: I believe that's all.

Redirect examination.

By Mr. Dunau:

Q. Mr. Rogers, do you recall your testimony in a proceeding known as the State of Missouri against Local Union No. 8-6 Oil, Chemical and Atomic Workers?

A. That's the Laclede Gas Company seizure case. Yes, I [fol. 93] believe I am generally acquainted with my testimony at that time.

Q. I am reading from page 265 of the transcript of record before the Supreme Court of the United States in that case and I ask you whether these are the questions that were asked of you and the answers you gave.

Mr. Siddens: If Your Honor please, this is objected to. This seems to be cross-examination and an attempt to impeach the witness here. This is his own witness.

Mr. Dunau: I think that is quite a formalism to say that Mr. Rogers is my witness. It is rather obvious that Mr. Rogers is not called by me as a person who I can expect to testify—

The Court: Objection overruled.

Mr. Dunau: Thank you, sir.

By Mr. Dunau:

Q. The question is, "Mr. Rogers, therefore no employee of LaClede Gas Company on strike is your employee, is that correct? Answer: That might be a question of law, but that is my opinion. I haven't been instructed to the contrary. Question: But as agent for the Governor that is your opinion? Answer: I certainly am not exercising any master and servant relation to him. Question: By the master and servant relation, you mean to say they are not and will not be your employees, isn't that right? Answer: [fol. 94] Yes. Question: That they will or they will not? Answer: They will not."

Do you recall those questions and answers?

A. And I repeat it today, they are not and will not be. They are employees subject to the documents that I have read here, and I was answering—well, I don't know whether

that was my television interview or whether it was in the court but—

Q. This was in the courts.

A. Well, they put the television interview in the court record. But anyway whichever it was, the answer is the same.

Q. And the employees of the Kansas City Transit Company are not and will not be employees of the State of Missouri, is that right?

A. Now, I didn't say that. Not employees of mine. They are employees within the scope of these three documents that we have mentioned here. And I said a while ago if that makes them employees in some limited or definitive sense of the State of Missouri, that's a question of law.

Q. I see, sir.

A. That they are not employees of mine in the master and servant relationship.

Q. You were then answering those questions as a personal individual unrelated to your function as an agent of the Governor when you said "they are not my employees"?

A. Oh, I wouldn't hedge like that on my part, I am not [fol. 95] too concerned about what interpretation you might wish to make of it. I am not going to be too positive. If it is a flexible situation in which you think you may interpret it to your advantage, I have no objection.

Q. No, I am not asking you to take objection or not to take objection as to how I have interpreted testimony. I am asking you what is your testimony. Did you intend those answers to reflect answers of yours as an individual?

A. I told you that I answered those questions just as you have read them there and you may make the most of them.

Q. Did you answer those questions as an agent of the Governor when you said "they are not my employees and they will not be my employees"?

A. Well, what does the record say? Was I asked that particular question?

Q. The record is on Page 265, sir.

A. Well, I know, but was I interrogated with reference to whether I was answering them personally or as an agent of the Governor?

Q. My understanding is that you were answering them entirely as an agent of the Governor of Missouri.

Mr. Siddens: I think we better not talk about what the understanding is.

The Court: Sustained.

The Witness: Yes.

[fol. 96] By Mr. Dunau:

Q. May I read them to you to clarify what your testimony was from page 179 of the record in the Supreme Court of the United States, these are the questions and answers as they were transcribed from your radio broadcast. The question—

A. Well, now, then that pinpoints it. They were from the radio broadcast and I was sitting there with an announcer interrogating me and while I have no objection, they were without opportunity to study the situation or to be as analytical as I may be able to do in a situation like this, and I have no objection and I said at that time those are my questions and answers, and I have listened to them on this re-playing in the courtroom, and there isn't a one that I would change today, and I will say that when you get through reading all of them.

Q. I don't intend to read all of them. I intend to read only one question asked you and the answer, and ask you if this is the—

A. That is the answer, I will tell you that before you ask it.

Q. I would rather—the question is: "During the seizure of the Laclede Gas properties are you my employer and am I working as an employee of and for the State of Missouri? Answer: The 2,200 striking employees of the Laclede Gas Company are working for the Laclede Gas Company. They are not employees of the State of Missouri."

[fol. 97] Was that your question?

A. That was my question and I explained that a while ago in my view as I understand the relation of employer and employee, they are not employees as such of the State of Missouri, but that they are employees working under

the authority of the police power of the State of Missouri to remain in their positions to render this utility service to the public as required by law.

Mr. Dunau: Thank you, sir.

(Witness excused.)

Mr. Browne: If the Court please, my name is Harry Browne—may we have this on the record—Harry L. Browne and this is my partner Arthur J. Doyle. We would like permission at the conclusion of this case to file a brief. Neither of us are going to be present tomorrow; otherwise we would have waited until tomorrow, but since neither of us are going to be here, we would like permission to file a brief.

The Court: The Court welcomes any help you can give. I will be happy to have your suggestions and briefs. I hear no objections.

Mr. Dunau: Well, how long would it take you to get a brief in?

Mr. Browne: We will get our brief in within the time prescribed by the Court.

[fol. 98] Mr. Dunau: We do not personally plan to file any briefs. We have a short memorandum we are going to file with the Court tomorrow.

The Court: I assume it will be done promptly, Mr. Browne. I intend to rule on this quite expeditiously.

We will recess until 10:00 a.m. tomorrow morning.

(Adjournment)

MORNING SESSION, TUESDAY, NOVEMBER 28, 1961

LOREN HARGUS, was duly sworn:

Direct examination.

By Mr. Dunau:

Q. What is your full name, sir?

A. Loren Hargus.

Q. Where do you live, sir?

A. 5701 Tracy.

Q. Do you hold a position with Division 1287 of the Amalgamated Association, sir?

A. Yes, sir.

Q. What is that position?

A. President.

Q. How long have you held that position?

A. Since July 1, 1944.

Q. Now, would you describe in general what are the classifications of the employees of Kansas City Transit which are represented in collective bargaining by Division 1287.

A. Basically they consist of operators, mechanics, service men, cleaners and janitors, and then other miscellaneous classifications.

Q. From what time has Division 1287 represented these employees?

[fol. 99] A. Since the certification handed down by the National Labor Relations Board.

Q. Was that February 19, 1943, sir?

A. February 19, 1943.

(Defendants' Exhibits 1, 2, 3 and 4 marked for identification.)

By Mr. Dunau:

Q. Mr. Hargus, I will show you a three-page document, the first page entitled "Supplemental Decision and Certification of Representatives," issued by the National Labor Relations Board in Case No. R-4705, and the last page a stipulation in the same case entered into between Kansas City Public Service Company, Amalgamated Association and the Regional Director of the 17th Region of the National Labor Relations Board. I will ask you whether these are accurate copies of the documents I have identified.

A. That is correct.

Mr. Dunau: I offer this in evidence as Defendants' Exhibit 4.

The Court: Defendants' Exhibit 4 will be received.

By Mr. Dunau:

Q. What was the date of the first collective bargaining agreement which was entered into between Division 1287 and the company, sir?

A. 1943.

Q. Has the Division had collective bargaining agreements with the company since that time?

A. That's correct.

[fol. 100] Q. What is the term of the most recent collective bargaining agreement?

A. November 1, 1959 through October 31, 1960.

(Defendants' Exhibit No. 5 marked for identification.)

By Mr. Dunau:

Q. Mr. Hargus, I show you what is entitled an agreement between Division 1287 and the Kansas City Public Service Company dated as of November 1, 1959, and ask you whether that is the agreement which expired and which you have just identified in your testimony?

A. That is correct.

Mr. Dunau: I offer that in evidence.

The Court: Defendants' Exhibit 5 will be received.

By Mr. Dunau:

Q. Now, prior to the expiration of the most recent agreement did the Division give notice to the company of a desire to negotiate proposed changes in the agreement?

A. It did.

Q. When did it do that?

A. Under date of August 29, 1961.

Q. And did it send a letter to the company identifying the proposed changes it wished in the agreement?

A. It sent a transmittal letter together with specific contract changes proposed by the union.

Q. Were copies of that letter sent to others?

A. Yes, sir.

[fol. 101] Q. To which others were copies of that letter sent?

A. They were sent to the Federal Mediation and Con-

ciliation Service and also to Missouri State Board of Mediation.

Q. Did the company notify the Division 1287 of its desire to terminate the agreement?

A. It did.

Q. When did it so notify the Division?

A. Under date of August 15, 1961.

Q. Now, was there a further notice given by the Division to the Federal Mediation and Conciliation Service concerning the negotiations between the Division and the company?

A. Yes, sir.

Q. When was that given?

A. Under date of September 29, 1961, at which time the Division filed Form F-7, Notice of Dispute, copies of which went to the Federal Mediation and Conciliation Service, to the Missouri State Board of Mediation, to the Kansas Department of Labor and to the Kansas City Transit, Inc.

Q. Now, during what period of time in 1961 did negotiations take place between the company and the—

A. The negotiations began on September 19, 1961.

Q. What is the last meeting that the Division has held with the company?

A. November 22, 1961.

Q. Now, was an impasse reached in bargaining?

A. Yes, sir.

Q. When was that impasse reached?

[fol. 102] A. In our opinion the impasse was reached on or about October 13, 1961.

Q. Would you identify for us the subjects which were in dispute between the company and the union?

A. Well, at that time all of the subjects were in dispute. Do you wish that I should name them?

Q. Name those which were in dispute.

A. Basically the issues?

Q. Yes.

A. Wages, of course, were in dispute; vacations with pay; group insurance; pensions; disability allowances; sick leave; a different system of work day for all maintenance employees; a profit sharing plan; a cost of living plan; and others. That's some of the basic issues that were involved. Runs, for example, in transportation; minimum guarantees;

extra man's guarantee; bonus for drivers who would go a full year without an avoidable accident.

Q. Did there come a time, Mr. Hargus, when the Federal Mediation and Conciliation Service began to attempt to mediate the dispute between the company and the union?

A. Yes, sir.

Q. When was that?

A. On October 19, 1961.

Q. Have negotiations since then been with the assistance of the Federal Mediation and Conciliation Service?

A. Yes, sir.

[fol. 103] Q. Did there come a time when Mr. Rogers, Chairman of the State Board of Mediation, participated in these negotiations?

A. Yes, sir.

Q. When was that, sir?

A. On October 30, 1961.

Q. Did he continue to sit in on those negotiations?

A. He sat in with the mediation—Federal Mediation Service since that time, yes.

Q. When you say since that time, is that—

A. Since October 30th.

Q. Through November 22nd?

A. I believe he was not at the meeting on November the 22nd.

Q. Did there come a time when Mr. Rogers notified the company and the union of his intention to assemble the full State Board of Mediation for the purpose of holding hearings on the dispute?

A. Yes, sir.

Q. When was that, sir?

A. On November 6, 1961.

Q. Was such a Board convened?

A. It was.

Q. When?

A. On November 8, 1961.

Q. Would you describe for us what happened on November 8, 1961, when the Board was convened?

A. Mr. Rogers convened the entire State Board of Mediation and asked both parties to appear. Both parties did appear. The union requested some ground rules under

which we might successfully meet in the matter of mediation, and in that effort they offered to meet with the State Board of Mediation.

[fol. 104] We offered to meet with the State Board of Mediation and lend our assistance to this dispute so long as the State Board of Mediation would confine its efforts strictly to mediatory efforts and not engage in making recommendations or publicizing the meeting.

Q. What was the response from Mr. Rogers with respect to that suggestion from you?

A. Mr. Rogers' position was that he felt that the State Board of Mediation as such had the same powers and jurisdiction as that of a panel which is provided for in the law, and that this—

Q. Which law, sir?

A. The King-Thompson Law, so-called King-Thompson Law. He contended that the Board had the right and might well exercise its alleged right to make recommendations and even make the meetings public.

Q. What did the union do when Mr. Rogers for the State Board of Mediation expressed his view that the meetings would be public and that recommendations would be made?

A. Well, the union, of course, has always felt that negotiations cannot be properly conducted in the newspapers or in the public—the union under those circumstances handed down by Mr. Rogers, felt that we could not participate in the meetings before the State Board of Mediation.

Q. Did the union then withdraw from that meeting on November 8th, sir?

A. We did.

[fol. 105] (Defendants' Exhibits 6 Through 10 Marked for Identification.)

(Colloquy outside the record)

Mr. Dunau: We have agreed to introduce into evidence the documents that I will identify for the record.

Mr. Siddens: Yes.

Mr. Dunau: As Defendants' Exhibit 6, a telegram dated October 31st to Mr. Hargus from the Governor.

As Defendants' Exhibit 7, a reply, a telegram replying to the Governor from Mr. Hargus dated November 1, 1961.

As Defendants' Exhibit 8, a letter dated November 8, 1961, to the members of the Missouri State Board of Mediation from Mr. Hargus.

By Mr. Dunau:

Q. Mr. Hargus, was this letter delivered to Mr. Rogers at the meeting of November 8th?

A. Yes, sir.

Mr. Dunau: As Defendants' Exhibit 9, a letter from Mr. Rogers to Mr. Hargus dated November 8, 1961.

By Mr. Dunau:

Q. Mr. Hargus, was this letter handed to you at the meeting of November 8th by Mr. Rogers?

A. Yes, sir.

Mr. Dunau: As Defendants' Exhibit No. 10 a telegram dated November 14, 1961, from the Governor to Mr. Hargus notifying him of the possession taken of the property of the Kansas City Transit Company.

[fol. 106] By Mr. Dunau:

Q. Mr. Hargus, did there come a time when the members of Division 1287 voted to strike in 1961?

A. Yes, sir.

Q. When was that, sir?

A. Well, after the company, of course, had unilaterally terminated our agreement and had upon reaching an impasse refused to arbitrate the unsettled issues, then we felt we had nothing left for us to do except to take a strike vote among our members and that was done on October 31st, November 1st and November 2nd, over a period of three days.

Q. Was that strike vote by secret ballot?

A. It was.

Q. What was the result of that strike vote, sir?

A. The result of the strike vote was as follows: There were 775 members voted, 681 voted for the strike, 74 voted against the strike and there were two blank ballots.

Q. Now, there were 817 employees according to the testimony yesterday who are active on the payroll of the company. Did the Division account for the number less than 817 who did not vote?

A. Yes. We had the lists checked designating those who voted and who did not vote and we found that the only ones that did not vote in the election were those who were home sick in bed or in the hospital or out of town on vacations.

Q. Now, did a strike take place, sir?

[fol. 107] A. Yes, sir.

Q. When?

A. At midnight November 13, 1961.

Q. Did picketing take place?

A. Yes, sir.

Q. Where?

A. Picket lines were established at the 26th and Harrison location, at the 9th and Brighton location and at the 10th and Lister location.

Q. Are these locations in Kansas City, Missouri, sir?

A. Yes, sir.

Q. Was the strike and picketing discontinued?

A. It was.

Q. When?

A. In the evening of November the 15th.

Q. Why?

A. Because I had served upon me a temporary restraining order issued by the Circuit Court of Jackson County.

Q. During the period that the strike and picketing took place was the strike and picketing peaceful?

A. Yes, sir.

Q. Now, after possession of the property was taken did you make inquiry of Mr. Rogers, Chairman of the State Board of Mediation, as to how to process grievances which might arise?

A. I did.

Q. When was that, sir?

A. I don't recall the date offhand.

[fol. 108] Q. Did you send a wire to Mr. Rogers?

A. I first talked to him on the telephone about it and he seemed to evade the question somewhat in my opinion, in other words, I wanted to know what individuals who

were acting as company representatives in the handling of these grievances and disputed issues which I had some piled up that had to be processed, he only referred me back to the order of the Governor. And then later I sent him a telegram setting forth my views.

Q. Did he respond by telegram, sir?

A. Yes, sir.

(Defendants' Exhibits 11 and 12 Marked for Identification.)

Mr. Dunau: We have agreed to have received in evidence as Defendants' Exhibit No. 11 a telegram from Mr. Hargus to Mr. Rogers dated November 17, 1961 and as Defendants' Exhibit No. 12 a telegram from Mr. Rogers to Mr. Hargus. These are the telegrams referred to in the testimony of Mr. Rogers.

As I understand, these have been received in evidence. The Court: They have been received.

By Mr. Dunau:

Q. Mr. Hargus, were there occasions previous to 1961 when the Governor of Missouri, pursuant to the King-Thompson Act, took possession of the property of the Kansas City Transit Company as a result of a threatened [fol. 109] strike by Division 1287?

A. Yes, sir.

Q. When were those previous occasions?

A. In 1950 and in 1957.

Q. Was the precise date in 1950 April 29, 1950, sir?

A. As I recall, April of 1950 to December the 11th, 1950.

Q. Those were the dates of the seizure?

A. Yes, sir.

Q. In 1957 was the precise date of the seizure November 6, 1957?

A. November 6, 1957 through, I believe it was, March 6, 1957.

Q. 1958?

A. '58, yes.

Q. Now, in 1950 did seizure take place before a strike began?

A. Yes, sir.

Q. Did an actual strike take place?

A. No, sir.

Q. Why did it not?

Mr. Siddens: I am going to object to that as wholly immaterial to any issue in this case.

The Court: I do not know but I will permit it. Overruled.

By Mr. Dunau:

Q. In 1957 did seizure take place before a strike occurred?

Mr. Siddens: Objected to as immaterial to any issue in this case.

The Court: Overruled.

[fol. 110] A. Yes, sir.

By Mr. Dunau:

Q. The answer is yes, sir?

A. Yes, sir.

Q. Did an actual strike take place?

A. No, sir.

Q. Why not, sir?

Mr. Siddens: Same objection.

The Court: Overruled.

The Witness: We didn't feel that we had a right to strike.

By Mr. Dunau:

Q. By virtue of the King-Thompson Act?

A. Yes, sir.

Q. It was testified yesterday, sir, that there are 817 active employees of the company represented by the Division. Is that correct, sir?

A. Approximately.

Q. How many of these employees live in Missouri?

A. About 665.

Q. How many live in Kansas, sir?

A. About 150.

Q. 115 or 50?

A. 150.

Q. Do you know, sir, how many men live in Kansas who operate busses on routes exclusively within Kansas?

A. Well, they have the one line that operates exclusively in Kansas. In addition to that they have three other lines that operate exclusively in Kansas during certain periods of the day or the week, but I do know offhand some of the [fol. 111] men who operate on the 7th Street-Parallel which operates exclusively in Kansas who live in Kansas.

Q. About how many are those, sir?

A. About nine.

Q. Now, sir, is it physically possible to conduct a strike directed to the Kansas operations of the company without interrupting service of the company in Missouri?

Mr. Siddens: Objected to as invading the province of the Court and calling for a legal conclusion.

Mr. Dunau: I said it is physically possible.

Mr. Siddens: Also asking for speculation.

The Court: Overruled.

The Witness: I would say it would be a physical impossibility because of the geographical layout of the State of Missouri with Kansas, and also as to our routes. To give you two specific examples, we have the Quindaro, Minnesota, Argentine lines that operate across the Intercity Viaduct, and, of course, the service to the Fairfax Industrial District in Kansas, people are carried across the Intercity Viaduct. That is quite a lengthy viaduct and the state line you will find is somewhere about the middle of that viaduct, so it would be in my opinion, and I have been with the operations of this company for over 35 years, a physical impossibility to operate only in Missouri and fulfill our [fol. 112] responsibility through operating on our lines in Missouri and strike the Kansas operation without affecting the riding public of Missouri.

Another example would be on the 23rd Street Viaduct where we have the 18th Street line and also the Argentine line crossing that viaduct, and you will find the state line in the middle of the viaduct, and you just can't pull a bus up to the state line and stop it or turn it around or anything of that kind. There is just no place to do that.

Moreover, if the Missouri patrons were going to have announced to them that the bus was only going to the state line and deliver them at the middle of these viaducts I am confident they wouldn't get on in the first place, so that would affect the riding habits of the Missouri patrons.

Moreover, this system operated by Kansas City Transit is a network of integrated operations serving the metropolitan area covering Kansas City, Missouri, Kansas City, Kansas, North Kansas City, Independence, Missouri, and points south here. They have their transfer regulations, Missouri patrons getting on the bus in Missouri going across into Kansas and using a transfer to catch a Kansas line to reach their destination, and vice versa, so the network of the system and the integration of the operation is such that it would be a physical impossibility to divide the two.

Mr. Dunau: I have no further questions.

[fol. 113] Cross examination.

By Mr. Siddens:

Q. Mr. Hargus, you say it is a physical impossibility to turn a bus around. Is it a physical impossibility to turn a bus around on the Missouri side before you enter the viaduct on either of these viaducts, the 23rd Street or the Intereity Viaduct?

A. Well, there might be some place prior to reaching the viaduct in which a bus could be turned around but we would not be, of course, fulfilling our responsibility to cover the lines in Missouri.

Q. But you could physically turn the bus around in the State of Missouri, could you not?

A. Yes, but we could not if we went to the state line.

Q. You couldn't go right up, butt up against the state line?

A. No, sir.

Q. But you could turn back short of the state line a quarter of a mile or so without difficulty?

A. There might be a place, yes, to do that.

Q. So that it would be physically possible, then, to operate wholly in Missouri, I mean physically possible?

A. No, I don't think so.

Q. You just said you could turn around before you reached the state line. You couldn't turn around wholly in Missouri, then, couldn't you?

A. We have an obligation, of course, to serve the routes [fol. 114] in Missouri and the routes in Missouri run to the state line. And if you cut short of the state line, then, of course, you are not serving the—

Q. Mr. Hargus, you are confusing legal obligation and the physical possibility. The physical—I understood you to talk about the physical possibility of turning around within and operating within the State of Missouri. Now, that's not the same, is it, as the legal question of whether you can go to the state line or not?

A. Well, all I am saying is this, that it is a physical impossibility to serve the lines in Missouri to the full extent because you cannot, of course, turn busses around in the middle of the Intercity Viaduct or the 23rd Street Viaduct.

Q. But you just answered the question that you could turn them around just short of the viaduct, didn't you?

A. But we would not be fulfilling our responsibility.

Q. That's a legal question then instead of a physical question, isn't that true?

A. I can't answer the legal question.

Q. Mr. Hargus, I would like to ask you with reference to this Defendants' Exhibit No. 10, the telegram from Governor Dalton to you dated November 14th. Did you receive that before or after you filed your suit in the Federal Court?

A. I couldn't answer that. I don't know.

[fol. 115] Q. Well, it was the same day?

A. I don't know.

Q. Well, it was the same day, wasn't it? Don't you know that?

A. I don't—I don't know whether I received the telegram before the case was filed or after.

Q. Well, I say, though, it was on the same day?

A. If you say it was on the same day, I accept your word for that.

Q. Yes. And you knew that the suit was to be filed in the Federal Court, did you not?

A. Well, of course, our attorneys, we have attorneys that handle our business on that and I think they could probably answer that better than I could.

Q. I see. Well, you authorized the filing of the suit in the Federal Court, it was filed in the name of the union, was it not?

A. Yes.

Q. And you knew that the suit was to be filed in the Federal Court?

A. There again—

Q. You had authorized your attorneys to file such a suit in the Federal Court, had you not?

A. I think you would have to—yes, we authorized suit be filed, yes.

Q. All right.

A. Yes.

Q. Now, Mr. Hargus, have you ever looked at the petition that is filed in Federal Court? Have you ever seen that? [fol. 116] A. I have seen it. I haven't studied it thoroughly, but I have seen it, yes.

Q. Well, do you or do you not know whether or not the constitutional questions, the issues that are presented in the Federal Court are the same as the issues presented in this case?

Mr. Dunau: May I suggest, sir, the Governor has the petitions in both cases, you can compare them and see whether they are the same or not. I fail to see how this kind of a question is properly directed to a lay witness.

The Court: Well, I am not so sure he knows the answer, but he may answer if he does.

Mr. Siddens: Yes. I don't know for sure, I am just trying to find out.

By Mr. Siddens:

Q. If you do not know that to be a fact,

A. I don't know whether they are the same wording.

Q. But the issues are the same, that's all I am asking, whether the wording is the same, the issues are the same?

A. Let them speak for themselves.

Q. You are attempting to raise, are you not, on behalf

of the union the same issues in the Federal Court that are involved in the proceedings here? Is that not true?

A. Well, again I say I think the petitions would speak for themselves.

Mr. Siddens: I believe that's all.

(Witness excused.)

[fol. 117] Mr. Dunau: Your Honor, that concludes the testimony on behalf of the defendants.

Defendants Rest

PLAINTIFF'S EVIDENCE

WILLIAM G. AUSTIN, was duly sworn:

Direct examination.

By Mr. O'Malley:

Q. Will you state your full name to the reporter?

A. William G. Austin,

Q. Where do you live, Mr. Austin?

A. 8001 Rosewood Drive, Shawnee-Mission, Kansas.

Q. What is your business?

A. I am Manager of the Merchants Association.

Q. Describe to us what that association is, how its members are constituted.

A. It is a group of retailers, you might term it to be a Chamber of Commerce for retailers only. Its functions are to act on anything that affects the merchants as a group or a whole.

Q. In what area does that Merchants Association operate?

A. In the area of Kansas City, Missouri.

Q. How long have you been with the association?

A. Thirty-five years.

Q. Can you briefly tell the Court what services your association renders to its members?

A. We discuss store hours, legislation, parking, movement [fol. 118] of traffic, promotion of various types.

Q. How long have you lived in the immediate vicinity of Kansas City, Missouri?

A. Sixty years.

Q. Sixty?

A. Sixty.

Q. How long have you been with the association?

A. Thirty-five.

Q. What businesses were you in prior to that time, sir?

A. Lumber business, stockyards and oil business.

Q. Did the fact of an impending strike by the Kansas City Transit, Inc., come to the attention of your association some time in the early part of November this year?

A. It did.

Q. State to the Court how that information came to your association and what action, if any, you took in relation thereto for the members of your association.

A. We heard that the strike was impending and we called an emergency meeting on Monday afternoon and informed our members that they should prepare themselves for an eventuality if the strike did occur, that eventuality being that they should properly arrange for their employees to get to work without the services of the Transit Company.

Q. Was your association in a position to do so and did it offer any particular plan to your members for meeting this emergency that you thought would attend?

A. The only plan we offered to them was the eventuality [fol. 119] and to suggest to them that they should prepare maps showing the location of their employees so they could get in touch with each other and possibly arrange group rides. The conditions in each store being different, we could not prepare a plan that would affect all stores.

Q. About how many members do you have in your association?

A. Fifty-eight.

Q. Can you tell the Court in about what area of Kansas City these members' businesses are located?

A. Well, they are located all over Kansas City, the predominant number of them are downtown but we have Sears

and Wards and seven stores on the Plaza, the balance are downtown.

Q. Were the plans that you gave to your members plans of long standing or were they hurriedly drawn up? Had you previously had any plan for this emergency?

A. No, sir. They were rather hastily drawn.

Q. At what hour of the day was your meeting called and the exact date of it?

A. 2:30 in the afternoon. I would have to see a calendar for the exact date; I believe the 13th is correct. Is November 13th on Monday?

The Court: Yes.

The Witness: Well, then, that would be the date.

By Mr. O'Malley:

Q. Where was this meeting held, Mr. Austin?

A. At our offices at 1110 Grand Avenue.

Q. How many people attended that meeting?

[fol. 120] A. Twenty-eight.

Q. Do your members have any type of executive committee that can act for the whole membership?

A. They have a Board of Directors.

Q. What representation was there on that date from the Board of Directors?

A. The President and I can't answer that exactly, but I believe eight or nine members of the Board.

Q. What is the total membership of the Board?

A. Seventeen.

Q. How long did that emergency meeting last on Monday?

A. Approximately an hour and a half.

Q. That would be from 2:30 until—

A. Until nearly 4:00, about a quarter of 4:00, I believe.

Q. You were in on the meeting yourself?

A. Yes, sir.

Q. What were the final directives received by the members in attendance?

A. As I have stated, that they should go back and prepare their employees, inform them that a strike was imminent and prepare their maps so they could get locations

of living places, and get in touch with groups that might live in their area to arrange for group riding.

Q. Now, if that meeting adjourned at 3:30 how much time did that leave the members to acquaint their personnel with [fol 121] the emergency?

A. Some stores it allowed them approximately an hour, other stores that were open on Monday nights until 9:00 o'clock it allowed them that interim.

Q. Do you have any knowledge as to the number of employees that might have been affected by the membership of your organization at that time?

A. Citywide?

Q. Yes, sir.

A. Approximately 20,000 people.

Q. Mr. Austin, can you tell the Court just why these plans have to be made, whether there is a benefit to the employees or whether there is a benefit to the store owners, your members, or just what is accomplished, whose benefit is served by making these hurried plans?

A. Well, primarily, of course, the stores benefit to help their employees but eventually that becomes service to the public because the retailers are the final link in the chain of distribution to the public.

Q. Do mercantile establishments, members of your association, in an emergency of this type ever find it necessary to furlough or lay off people?

Mr. Dunau: I object to the words "emergency of this type" as being—

The Court: You might rephrase it.

[fol. 122]

By Mr. O'Malley:

Q. In the situation confronting the members of your association on Monday, November 13th, do you know of your own knowledge whether or not it was within the plan of your members to furlough or lay off any employee?

A. Well, the retail stores today operate with what they call part time employees, regular part time employees to distinguish, sir. Naturally, if you did not expect business to be good on Tuesday you would not call in the regular part time employees, thus you would have a reduction of

force. You would also, if you were on the ball so to speak, change your advertising and any other things that you could cut your expenses on.

Q. In laying off employees or cutting back, do the employees have any voice in that act of management?

A. No, sir, they would not have.

Q. Does your membership in a situation such as we have disclosed have any plan for affording their employees transportation at the cost of the mercantile establishments?

A. No, sir, they do not.

Q. In the event of a mass transit stoppage in Kansas City on November 14th, if you know, tell the Court what transportation other than Kansas City Transit, Inc., is available to people coming to the downtown area in Kansas City.

A. The only transportation that I would know of would be the bus lines that run into Kansas which we call [fol. 123] interurban lines.

Q. Mr. Austin, over a period of 30 years since you have been with the Merchants Association have you had occasion to make any studies of transit systems in the United States or this immediate area and—I will ask you that question first for either an affirmative or a negative answer.

A. Yes, I have.

Q. How did you come to make those studies?

A. Because of its effect on the retail business.

Q. Who directed that you make those studies?

A. I did it on my own.

Q. In what parts of the country have you made such studies and about how many have you made?

A. Well, I have watched transportation in a number of cities, in London, Paris, Rome, of course New York, Philadelphia, St. Louis.

Q. Can you tell the Court about what length of time you were engaged in making each of these studies of these various transit systems? How long would it take you to make and complete one study?

A. Well, the type of study we are after, the methods and the movement of people, it would take a day or two in each city.

Q. In order to shorten this, could you tell us in your own opinion what is the most complicated transit system you [fol. 124] have ever made a study of?

A. The most complicated?

Q. Yes, municipal transit, public transit system?

A. I believe London.

Q. Have you ever made a study of the transit system in Los Angeles?

A. Not completely. I have looked at it carefully on several occasions but I did not make a study of it.

Q. Have you made a study of a transit system which would be comparable in your opinion to that transit system which is now carried on in the City of Kansas City and its environs?

A. Yes.

Q. What city was that and how closely would the population approximate Kansas City?

A. St. Louis and it would be approximately twice the size of Kansas City.

Q. In making your study of the transit system in St. Louis did you have occasion to study the effect of a mass transit strike on the movement of employees and people generally in and out of the downtown area of St. Louis?

A. No, sir, I didn't in St. Louis; I did in Philadelphia.

Q. Would you relate briefly to the Court your study in Philadelphia of what facts you found and what conclusions you reached?

A. We found that business in Philadelphia was decreased retail-wise better than 40 per cent and the number of [fol. 125] employees were reduced approximately 15 per cent and the oddest thing was that it decreased the number of people who went to parking lots, the reason for this being that they thought that there would be a considerable traffic jam and "I just can't make it so I won't even try."

Q. Have you made a study of the transit system in this City of Kansas City?

A. Yes, sir.

Q. How long ago did you make that study?

A. The last survey we made, I believe, was in 1956. At that time we determined that 65 per cent of our employees came by transit to work.

Q. How long were you engaged in that 1956 transit study?

A. That survey took, I believe, about four or five days.

Q. How many people were engaged in making that study?

A. I do not know because it was purchased and was made by Community Studies.

Q. Could you tell us something about Community Studies, what type—

A. It is an organization that makes a business of making surveys of various types.

Q. Where is that organization located?

A. In Kansas City.

Q. Were you in Kansas City on November the 14th and 15th when the mass transit strike was in effect here?

A. Yes, sir.

[fol. 126] Q. Did you have occasion to observe the effects of that strike on the downtown area in Kansas City?

A. Yes, sir, I did.

Q. From your observation what did you find?

A. We contacted a number of stores to find out how their business was and we found that the reduction in business in the least was 10 per cent and in the majority between 30 and 40 per cent.

Q. Can you give your expert opinion as to what effect a prolongation of this strike would have had on this City of Kansas City?

A. Based on what has happened in other cities, why, we could expect at least a 30 per cent reduction for a considerable length of time.

Mr. Dunau: In what, sir?

The Witness: Sir?

Mr. Dunau: A 30 per cent reduction in what?

The Witness: In sales.

By Mr. O'Malley:

Q. And what do you mean by a considerable length of time? Over a period of weeks, months or—

A. Over a month.

Q. Can you tell the Court from your experience how any damage which may be done by a prolonged strike of this

nature, how that damage can be repaired, if at all, how can we recoup or how can merchants recoup, how can anyone [fol. 127] affected recoup, if possible?

Mr. Dunau: I object to the question. I think we should have a more particular definition of what damage means before the question is permissive.

The Court: I think I understand what he means.

Overruled.

The Witness: I can answer it!

By Mr. O'Malley:

Q. Yes.

A. I don't believe it can ever been recouped. I remember when I first came into the retail business I thought that we all bought the things that we needed and what we don't buy today we buy tomorrow. After being in it as many years as I have I find that is not true. The sale that is not made today is never made. I will illustrate it this way. Suppose I have \$5.00 in my pocket and tomorrow is pay day and I go down the street and I see a good-looking tie in the window and I decide "I'll buy it". As I go to the entrance of the store a friend of mine comes along and says, "Bill, we are going to have a poker game tonight. Come on and play poker." So I say, "Fine". So I keep the \$5.00 to play poker. Now, if I lose the \$5.00 I never buy the tie.

Q. Mr. Austin, in the event of a prolonged transit strike of the Kansas City Transit, Inc., is it your opinion that such a strike would or would not seriously affect the public interest of the people in this city?

[fol. 128] Mr. Dunau: I object to the question, Your Honor, I hardly see that this witness is qualified to testify whether a prolonged strike in mass transportation in K. C. would jeopardize the public interest, safety and health.

The Court: Sustained.

By Mr. O'Malley:

Q. Now, Mr. Austin, you testified that you lived in the city for 60 years?

A. Yes, sir.

Q. You have been in the mercantile business, you have been with the Merchants Association for over 30 years, and for that entire 60 years you have lived here and have acquainted yourself with the daily moving in and out of traffic into Kansas City?

A. Yes, sir.

Q. And is it from that knowledge over that number of years that you draw your conclusions that you have made here before this Court?

A. Yes, sir.

Q. Do you recall any previous strike by the public transit system in the city?

A. Yes, sir.

Q. When was that?

A. In 1918, I believe.

Q. Do you recall the transit system strike in 1950?

A. In '50?

Q. Well, I will withdraw the question.

A. I do not.

Mr. O'Malley: I believe that's all, Mr. Austin.

[fol. 129] Cross examination.

By Mr. Dunau:

Q. I have a few questions, Mr. Austin, please. Mr. Austin, I believe you told that there are 58 members in your association?

A. Yes, sir.

Q. Are all those members located within the State of Missouri, sir?

A. Yes, sir.

Q. Would you describe for us the kinds of businesses these 58 members operate?

A. They are department stores, mail order stores and specialty stores.

Q. Engaging in conventional retail distribution?

A. Yes, sir.

Q. Ties, handkerchiefs—

A. Hard goods.

Q. Pots and pans?

A. Yes, sir.

Q. Tires for automobiles?

A. That's right.

Q. You mentioned that there was transportation, mass transportation other than Kansas City which was inter-urban lines. Will you describe that for us, please?

A. I do not know the names of the lines but you know the lines that serve Prairie Village and Mission, Kansas.

Q. Do they operate from Missouri into these locations?

A. Yes, sir.

Q. And they operate from those locations into Missouri?

A. Yes, sir.

Q. And the strike of Kansas City Transit does not affect those operations?

A. No, sir.

[fol. 130] Q. Do you know how many passengers these operations carry?

A. No, I do not.

Q. Is it a substantial number, sir?

A. I would not say so.

Q. Did you make a personal study of the transportation strike in Philadelphia, sir?

A. Yes, sir.

Q. When was that?

A. Five or six years ago, I believe, I am a little hazy on the exact date.

Q. Were you in Philadelphia at the time of the strike?

A. I was in New York—

Q. You were not in Philadelphia?

A. —and the strike took place so I left New York and went to Philadelphia to witness it.

Q. So you were in Philadelphia at the time the strike took place?

A. In Philadelphia at the time of the strike, yes, sir.

Q. How long were you in Philadelphia observing that strike?

A. Two days.

Q. What was the duration of that strike, sir?

A. I could not honestly answer.

Q. From whom did you acquire your information in

Philadelphia with respect to the effect of the strike in Philadelphia?

A. Who did I get—

Q. From whom did you acquire your information?

A. What way do you mean?

[fol. 131] Q. Well, you told us for example that there was a decrease—

A. Decrease in business?

Q. —of retail business.

A. I had luncheon with a number of the merchants and they gave us the information.

Q. And this is the extent of your study with respect to the decrease in business?

A. With them and with the head of the Merchants Association.

Q. So you were told in a luncheon meeting by these merchants that they had suffered a 40 percent decrease?

A. Yes, sir, which was afterwards substantiated by the figures that the merchants reported to the Federal Reserve Banks in their district each week.

Q. As to the sales that week?

A. As to the sales.

Q. How did you determine that the decrease in sales was attributable to the strike?

A. Well, the weeks before and the weeks after the strike there was that much difference in business.

Q. Did your study indicate whether hospital services were curtailed in Philadelphia?

A. No, sir.

Q. Your study did not indicate that?

A. No, sir.

Q. You made no study of it?

A. No, sir.

Q. Did you make a study as to whether prisons and police stations continued to function?

A. No, sir.

[fol. 132] Q. You made no such study?

A. No, sir.

Q. Did you make a study as to whether utility companies continued to operate normally?

A. No, sir.

Q. Your study then was confined to whether retail sales of handkerchiefs, ties and such items were reduced or increased during the strike?

A. Yes, sir.

Q. Now, you testified that during the two-day strike in the Kansas City area you contacted members of the Association and asked them what their experience had been with respect to retail sales during those two days?

A. Yes, sir.

Q. And they reported to you at least a 10 per cent decrease?

A. One store was 10 percent.

Q. What was that store, sir?

A. That one store was—well, do I have to answer that? I am giving away information that is given to me in confidence.

Q. Well, you have testified with respect to this information, I think you are obligated.

Mr. O'Malley: I don't believe the witness testified with respect to figures of any one institution, any one commercial establishment. I think that might be going too far. I certainly wouldn't ask it of him and I think to ask it in cross-examination is exceeding the direct examination.

The Court: Is it some trade secret that you would prefer [fol. 133] not to divulge?

The Witness: Whenever the stores give me information concerning their volume, it is understood that I am not to divulge that so that any other store knows it. They are very secretive about their volume from each other. Your Honor, I could answer what type of store it was.

The Court: That suffices.

Mr. Dunau: I think perhaps it might.

The Witness: A department store.

By Mr. Dunau:

Q. A department store?

A. Yes, sir.

Q. Was your information with respect to the 30 and 40 per cent decrease of others also department stores?

A. Yes, sir.

Q. How would you account for the difference between a 10 per cent of one department store and 40 or 50 per cent in the other?

A. It might be in the previous years, and remember they make their comparisons, the stores do, on previous years for that particular date, that the previous year this particular store may have had some very low figures to go against. That's the only way I can answer that particular one because the average was 30 to 40 per cent.

Q. Did you make an inquiry at the end of the week during which the strike took place to ascertain whether considering [fol. 134] the total sales that week there had been any decrease over the comparable period the preceding year?

A. I did not. I referred to the Federal Reserve figures for the week.

Q. What did you find when you looked at the Federal Reserve figures?

A. There was a decrease.

Q. Of about what?

A. I believe it was 13 per cent.

Q. So that over the course of the week there had been evidently a recoupment of at least 27 per cent in those stores which had experienced the 40 per cent decline during the two days?

A. We had three days at the end of the week that were very good days.

Q. So that on the basis of the reports to you, the net effect of the two-day strike was a 13 per cent decrease in retail sales in Kansas City, is that correct, sir?

A. That's correct.

Mr. Dunau: I have no other questions.

Mr. O'Malley: I believe that's all. Thank you, sir.

(Witness excused.)

[fol. 135] GERALD H. FRIELING, being sworn, testified:

Direct examination.

By Mr. O'Malley:

Q. Will you state your full name to the reporter, please?

A. Gerald H. Frieling.

Q. Where do you live, Mr. Frieling?

A. 901 West 96th Street, Kansas City, Missouri.

Q. What business are you in?

A. Manager of the Downtown Committee of the Chamber of Commerce at the present time.

Q. How long have you been with that organization?

A. Slightly over a year.

Q. What employment or service were you in prior to that time?

A. Just prior to it I was in consulting engineering about five years.

Q. What type of consulting engineering did your firm do?

A. Traffic and transportation.

Q. What was the name of your firm, if you were with a firm?

A. The first part, or about the first year, I was with Ebasco Services, Inc., of New York; I acted as consultant on operations for the Department of Government Transport in South Wales, Australia, and after the first year, when that work was completed, I did traffic and transportation work for Wilbur Smith and Associates of New Haven, Connecticut.

Q. Are you acquainted with the Kansas City Transit, Inc., a corporation which operates the transit system in Kansas City?

[fol. 136] A. Yes, I am.

Q. How long have you known of that association or corporation?

A. Prior to going into consulting work, I was an employee of that firm for approximately thirty years.

Q. While you were an employee of the transit company here in Kansas City during a period of thirty years, did you ever have occasion to deal with their problems of trans-

portation in the face of a possible stoppage of mass transportation?

A. Well, the first part, I can say yes, because I happened to be in charge of transportation during the last ten years or so, being the vice president in charge of transportation. When you say in charge of the stoppage, during that time we did have occasions during negotiations when we did not always agree, and during one or two occasions we were seized by the State of Missouri, but during the time that I was employed by the company, we had no strike.

Q. As a consulting engineer, in dealing with matters of transportation, can you tell the Court on how many occasions you have studied transportation systems in various cities of this country?

A. You say during the time that I was employed by the transit system?

Q. No, while you have been a consulting engineer.

A. Oh. Of course, the first year, as I say, was entirely on the Australian problems, in New South Wales, being based [fol. 137] at Sydney, and also while I was there I was asked to do a little private work in Melbourne on that, rapid transit systems, as well as surface transit. After that I did some transit work in several cities in the United States, including many cities around the Los Angeles area, and Phoenix, and Hartford, Connecticut, and Reno, Nevada, and several places around.

Q. Are you able to compare the transit system operating in Kansas City with the transit system in any other particular city as to its size?

A. Well, there are several cities that might be compared to Kansas City as far as the transit system is concerned, including Cincinnati, possibly New Orleans, Denver, San Antonio, Dallas. I would say any of those might be somewhat comparable to Kansas City.

Q. Now, have you made a particular study of the transit system in any of those cities you have just mentioned?

A. Not as a consulting engineer. During the time that I was directly involved in transit work, we, of course, made studies as part of our everyday work to compare the operations in other localities.

Q. In the event of a sudden stoppage of mass transpor-

tation, public transportation, in Kansas City, tell the Court if you know just what means of transportation are available to people who must come to the downtown area of Kansas City, in and out.

A. Well, I might say that during the war, as we all [fol. 138] know, transit demonstrated its importance, and most people who traveled had to go by transit at that time, because they restricted automobile travel. Since the war, there has been a great increase in road construction, particularly of the freeway type, and there has been great increase in automobile use, and as a result there has been a decrease in transit travel during that time. And during that period there seemed to be in the minds of many people that perhaps the automobile could handle most of the travel. Recently, however, there seems to be a trend in the minds of thoughtful people that perhaps is not true, and it is evidenced by the recent actions taken in the Congress of the United States in which they have recently appropriated large sums towards the development and study of transit and suburban trains; and the cities themselves, that I have come in contact with in the last few years, have indicated that they desire the balance of transportation, believing that particularly in the downtown areas that some form of transportation, like mass transit, was desirable and a practical necessity to carry the people downtown that they felt that they should have and had been accustomed to coming downtown to work and to shop. That without, having the downtown spread over such a large territory, that it would discourage people from coming downtown.

Q. What is the membership of your Chamber of Commerce [fol. 139] of which you are one of the officers here?

A. I don't know whether I can give you that. I believe that it is about 5,000, but the Downtown Committee, which I manage, is an autonomous committee of the Chamber of Commerce in that it operates on its own, soliciting its own funds and electing its own officers and governing its own affairs; and although we are known as the Downtown Committee of the Chamber of Commerce, we cooperate with them very closely, we do operate independently.

Q. Did your committee have brought to its attention the

impending work stoppage of the transit company here in Kansas City on November the 14th and 15th, this year?

A. Yes.

Q. How was that knowledge brought to your committee?

A. Well, it really was brought to the committee by myself, by seeing the notice of it in the paper and also hearing of it on the air.

Q. Well, as head of your Downtown Committee, what action, if any, did you take in relation to that public notice that you saw?

A. Well, as far as the action that was taken, that was taken primarily by Mr. Austin's group, because that is the group that is affected as far as the shopping, and they will feel it first. As far as the people who work in the downtown area was concerned, I was asked to serve on a committee appointed by Mayor Bartle, which would act, if the [fol. 140] strike continued, to take certain action dealing with staggered hours and anything else that they believed was necessary to keep the traffic flow somewhere near normal in the city.

Q. At just what time were you asked to serve on that committee?

A. Mayor Bartle acted very shortly after the strike was called. As I recall it, it was either that same day or early the next day.

Q. Have you ever held any official position in the State of Missouri, Mr. Frieling?

A. Yes, I was fortunate in being appointed a member of the State Board of Mediation at the time it was formed in 1947 and was reappointed to it after each term until I resigned in 1956 at the same time I resigned from the transit company to go into consulting work.

Q. Did your committee which was appointed by Mayor Bartle have any meetings on November 14, 15, and 16, of this year?

A. It did meet once to discuss this matter and that was all.

Q. How many people on that committee?

A. I believe there were nine.

Q. Do you recall the names of any of the members? Give us the names if you remember them, please.

A. There was Mr. Dwight Bedell, Industrial Commissioner of the Chamber of Commerce, who was acting concerning industry; Mr. Austin, who you just have heard, who was acting in terms of the merchants; Captain or Lieu- [fol. 141] tenant Colonel Jamison of the—or no, it was Canaday of the Police Department; and City Manager Robert Weatherford, who was to be chairman of the committee; and Roland V. Petering who is an officer of one of the banks and member of the advisory commission; and O. J. Falin, who was the Director of Traffic for the City. Any other names that happened to be on this committee do not come to me at this time.

Q. You have indicated, have you not, to the Court, that you served as a member of the State Board of Mediation for nine years, about 1947 to '56?

A. Nine or ten years. It's almost ten, as I recall; I think I was appointed in October and served until about September of '56.

Q. Are you able to give an opinion to this Court as to what effect a prolonged strike of the Kansas City Transit, Inc., might have on a city the size of Kansas City; in fact, in this city?

A. Well, it probably would have a great effect in two ways. First, it would have a very detrimental effect upon the company itself. I think a prolonged strike would certainly hurt the company very much by the loss of earnings, and even though possibly during that time they wouldn't have any wage payments, at the same time they would have a lot of expenses going on, and much of that business, or all of it, in fact, couldn't be recouped, and you would find [fol. 142] them at the end of a prolonged period in very bad straits. As far as the people are concerned, I think it would have quite an effect. In comparing facts which might be asked about at this hearing, I glanced over a report or a study that was made by the firm that I was associated with a few years ago, the Wilbur Smith and Associates, who made the origin and destination studies for the Highway Departments of both Missouri and Kansas from 1957 to 1958. I find that the—

Q. Let me ask you this: Did that study have any direct bearing on the Kansas City Transit, Inc., in Kansas City,

its movement on the streets and carrying of population, and so forth?

A. Yes, sir. The study included a—

Mr. Dunau: May I interpose an objection? If the witness is simply going to report to us a study of which he knows nothing except what he has read, I do not think this is competent on the question of a strike in mass transportation in Kansas City.

The Court: I don't think it is responsive to the question.

By Mr. O'Malley:

Q. Mr. Frieling, did you take any part personally in making this study that you have referred to?

A. Yes, I did. Being with the firm, we conducted similar studies to this in Phoenix and that area, and Reno and [fol. 143] that area, of which—and Riverside, California, of which I was also a part, and as such, those studies being completed prior to the time this study was completed, I was asked to stop here on my way to headquarters in the East and complete this study and close up the office. I was here about seven or eight months at the completion of this and am fairly well acquainted with it.

Mr. O'Malley: If the Court please, may the witness now go ahead and report on the study?

Mr. Dunau: Well, if the witness is going to report what he did with respect to acquiring information pertaining to transit in Kansas City, I have no objection to that, but if he is simply going to relate what is in a report, then I do object. I take it that what the witness is now going to state is what he, himself, has done with respect to a study pertaining to Kansas City.

The Court: He may refresh his recollection.

The Witness: Do I answer?

The Court: You may go ahead and answer.

The Witness: The point I was going to make is that in this study we found through interviews that there was approximately 64,000, or about 29.5 per cent of the people who traveled the day before we made the interview, traveled by transit in the downtown area, and I just wanted to compare that with the actual studies and checks that were made

[fol. 144] at our request by the transit company, which showed that there were 56,000 people traveled inbound to the central business district, and 55,900 outbound, from 6:00 a.m. to 10:00 p.m., and one part that we were intensely interested in was the people coming in what we might call the rush period in the morning, which was 6:00 a.m. to 10:00 a.m. We found there was 26,700 that were checked inbound. And to answer your question then directly, on the basis of this, on taking a general average which we have found in many of these studies, that there is approximately 1.5 persons per auto, in many of these it would indicate that if these people who rode transit during these three or four hours in the morning rush coming towards the downtown areas all rode automobiles, it would mean that there would be approximately 17,800 automobiles to transport those people into the downtown area, which is approximately as many parking spaces as we have around in the central business district at the present time. Now if—and which we often use, about 350 square feet per parking space—we found parking space at that square footage for all those automobiles, it would mean we would have to add about 6,230,000 square feet of parking space in the downtown area to take care of them. Now to give you an idea of what that would mean, it would mean that in some work that I have done recently, in some of the garage work, that [fol. 145] we take a 5-story high rise garage that will house somewhere around 500 cars, that will take about 62 or 63 thousand square feet, so that, roughly, we would have to build about a hundred of those garages in order to house these many automobiles, which, of course, is probably out of the question.

Now the question is just what this would mean and how we would get these people downtown, and so I was concerned with the peak hour of transit, and I found that during this same period in which the check was made inbound that there was 12,000 transit people came down in the peak hour. Applying that same 1.5 persons per auto would equal about 8,000 more autos during that peak hour. And also, on my experience of finding what the capacity had been in cities of this kind, I take a general flow of approximately 400 vehicles per lane per hour, and it would mean that we

would have to have 20 more traffic lanes coming into the downtown area during that peak hour to handle that many automobiles.

Now, I would say that to get that sort of thing accomplished would be a thing that wouldn't be done over night, and that a transit strike over a prolonged period would, of course, then have a very detrimental effect upon the downtown area.

By Mr. O'Malley:

Q. A moment ago you related to the Court the effect of [fol. 146] a prolonged strike on the company. Now, as a long-time employee of the company, will you tell the Court what effect, if any, a prolonged strike would have on employees of the company, assuming that the company employs around 800 people?

A. Well, I think that possibly I might answer that by stating what I understood when I was within the transit work, that some companies that have had prolonged strikes have indicated that many employees sought work elsewhere during the period of that strike, and so that when the work was finally resumed, why, there were quite a few people who did not return. I think it goes without saying, also, that if a strike continues for a long period of time, unless those employees have outside income, either private income of some kind or by receiving benefits from the union, that they would suffer materially.

Q. Now, you spoke of some employees that might not return after a prolonged strike. Concerning that type of employee, are they easily replaceable by the company?

A. Well, not always. The company usually has a training period that runs over, very often, several weeks, and even after that, why, they believe that it takes several months at least before an employee becomes a man proficient in that work.

Q. Are you acquainted with what action, if any out of the [fol. 147] ordinary was taken by the police department of this city during the two-day strike on November 14th and 15th toward moving traffic in Kansas City, which wasn't taken ordinarily but had to be taken at that time?

A. On one part I can only report on what I understood, that they put more policemen on the streets. My observation was to that effect, that there were many policemen stationed at intersections that normally do not have policemen, and at those busy points they did turn off the traffic lights and the policemen did direct the traffic manually during the rush periods.

Q. Speaking from your experience as a member of the State Board of Mediation, also as a long-time employee of the transit company in Kansas City, also as a consulting engineer in transit problems, please tell this Court whether or not in your opinion a prolonged strike of the transit company here in Kansas City would or would not cause irreparable damage.

Mr. Dunau: I object, Your Honor. I do not believe this witness is qualified to testify with respect to opinion in such general terms.

The Court: Sustained.

By Mr. O'Malley:

Q. Mr. Frieling, has the committee that you were appointed to by Mayor Bartle been disbanded yet?

A. I have not received notice that it has.

[fol. 148] Q. Was that committee an emergency committee?

A. I would call it that.

Q. Why would you call it that?

A. I think it was designed to act in regard to this particular situation.

Q. Will you give your opinion as to whether or not a prolonged strike—do you have an opinion as to whether or not a prolonged strike in Kansas City of the Kansas City Transit, Inc., would seriously affect the public welfare here in Kansas City?

Mr. Dunau: That is the same question, Your Honor, to which objection has just been sustained.

The Court: I will sustain the objection.

Mr. O'Malley: I believe that is all. Thank you, sir.

Cross examination.

By Mr. Dunau:

Q. I believe you told us, sir, that the committee appointed by Mayor Bartle recommended a system of staggered hours in order to keep traffic normal, is that correct, sir?

A. No. What I said was that the committee appointed by Mayor Bartle was to consider measures such as staggered hours, in case that they felt it necessary to invoke certain measures.

Q. Would you describe for us what the staggered hours aspect of the relief consists of?

A. That would have meant that if the strike had been [fol. 149] prolonged and it seemed necessary to stagger the work hours of the people in the city in order to effect a better flow of traffic in those hours, those changes in hours would have been requested of the firms.

Q. Now, you say if the strike had been prolonged. How long would the strike have had to last before the committee would see fit to recommend staggered hours?

A. I believe that would have taken place rather promptly.

Q. Well, the committee did not make such a recommendation during the two-day period of the strike?

A. Not during the two-day period, no.

Q. How much longer would the committee have waited before it made such recommendation?

A. I am not chairman of the committee, so I don't feel as though I should speak for him, but if you want my own opinion, I would give that.

Q. You did tell us that this would be requested after a prolonged strike, and what I am attempting to ascertain now is what you mean by a prolonged strike. During what period after the commencement of the strike would you regard it as necessary to invoke a staggered-hour system?

A. My own opinion in this particular instance, referring only to the staggered hours, my opinion would be that it would have been requested within the next day or two.

Q. I see. And if a staggered-hours system were put into [fol. 150] effect, what, in your opinion, would have resulted in terms of traffic flow in Kansas City?

A. We had hoped that it would help the traffic flow by spreading out the work hours of the people in the congested areas.

Q. Did the committee have any concern that people would not be able to get to work?

A. Oh, yes, I think so.

Q. How many people did you estimate would be unable to report to work because of the absence of mass transportation?

A. As far as I know, there was no estimate made.

Q. In fact, how many—did you have any information as to whether any people failed to report to work during the two days of the strike?

A. Only from what we heard, that there had been some that did not report.

Q. And how many was "some", sir?

A. I have no idea. Just the general idea that we heard that there were some people that were unable to make it because they were not able to arrange for group rides and had no other way of getting down, being in the income group, you might call them, who did not own automobiles.

Q. When you say that you had reports that some people were unable to come to work, do I infer correctly that most people were able to get to work?

A. I think that is probably true.

Q. Now, you told us that on the basis of a study, you [fol. 151] found that a car carries 1.5 passengers, is that correct, sir?

A. That's a pretty good average.

Q. And it was on the basis of that average of 1.5 passengers that you estimated that you would have to have 17,000 automobiles coming into the downtown Kansas City area in order to carry the normal traffic flow in to the downtown area in the event of a mass transportation strike, is that correct, sir?

A. I said that it would take—on the basis of 1.5 persons per auto, it would take that many autos to transport the 26,700 people who came by transit into the downtown area between 6:00 a.m. and 10:00 a.m. And assuming, of course, that those people were the ones coming down to work and to shop at the first part of the shopping day, so that they

could not group ride any more than what the 1.5 persons per auto would indicate.

Q. Now, suppose they were group riding; do you make a study of what the number of cars would have to be in order to get the normal flow of traffic into Kansas City?

A. No, but that would be very easy to do, because you could group ride it up to the point of the capacity of the automobile, instead of 1.5, if you could assume that to be done.

Q. Now, isn't that one of the methods that was, in fact, suggested to relieve any possible disturbance in the flow [fol. 152] of traffic, group riding?

A. It was done, there is no question about that.

Q. So when you have group riding, your 1.5 is not a representative figure, is that correct?

A. For the time being it would increase somewhat above that, yes.

Q. Substantially above that, would it not, sir?

A. That all depends on how well that they can put that group riding plan into effect. During the war we found it difficult to do in many instances.

Q. Now, you also indicated, as I understood it, that this problem of 17,000 automobiles, which your study indicates would be necessary to transport people into the downtown area in the event of cessation of mass transportation, would become a problem only after a strike was prolonged; is that correct, sir?

A. It would become critical after that prolonged time, yes.

Q. How long would it have to take before it became critical?

A. I think that possibly a week or two, because to start with I think some of the people would not come downtown. It would relieve part of that. But again, I assume that your question is concerned with getting as many people downtown as we had in the first place, and if all the people then tried to get back out of town, it would probably take a week or two for them to do that, and if they came down at [fol. 153] that time, it would take these many automobiles to do it.

Q. Now, you say there are 26,000 people coming down town during these peak hours. Of that number, how many are coming to work?

A. The City Plan Commission made a study in 1957 that showed approximately 66,000 people working in the core area of the downtown section, and there was about 25,000 or so in the fringe area of the downtown area. So that in the central business district and the fringes that I think would be served by the transit firm there would be approximately 90,000 employees.

Q. Well, but I am talking about this 26,000, sir.

A. Yes. And from what surveys have been made, I think Mr. Austin mentioned one in 1956 that he showed 65 per cent riding transit, which would mean—take about six tenths of the 90,000, you will get about 50,000 people that would be riding transit if they came in there.

Q. I don't quite understand that. I thought we began with a figure of 26,000 people coming into the downtown area during the rush hours in the morning.

A. That's right.

Q. Now, it cannot exceed 26,000 people if we begin with that premise.

A. That's right.

Q. How many of those 26,000 people who came down [fol. 154] during the rush hours in the morning are going to work?

A. I would have to just make an estimate of that, because I don't know of any case in which these people were actually asked whether they were coming down to work or to shop, but inasmuch as the stores do not open until 9:30 for shopping, my guess would be it would be probably 90 per cent or so of those people would be coming down to work.

Q. Is your opinion with respect to the problem that might be created by cessation of mass transportation confined to the problem that would be created in the downtown district of Kansas City, Missouri?

A. Primarily so, inasmuch as downtown, I think, depends upon transit more than any other part of the city, and I think transit depends on downtown also more than any other part of the city.

Q. Aside from that area then, no emergency could be

considered to be in being as a result of a mass transportation strike?

A. I wouldn't say that wholly. I think the industrial plants are also affected by the cessation of work in this case.

Q. Did you make any study with respect to whether industrial workers were able to report to their plants during the period of the strike?

A. I did not personally, no.

Q. You do not know their information on whether there would be any interruption of people reporting to work to [fol. 155] industrial plants?

A. I do not have that direct information.

Q. Do you know whether hospital employees were unable to get to work during the strike?

A. What kind, please?

Q. Hospitals.

A. Oh, hospitals? No, I do not; I made no—

Q. Did the committee receive any reports that hospitals were being understaffed as a result of their employees not being able to get to work?

A. The committee would not receive word from that, inasmuch as they are a downtown committee.

Q. No, I am concerned with the committee that the Mayor set up.

A. Oh. I don't know. You will you have to seek that information from the committee itself.

Q. Do you have any information with respect to whether public utilities like gas, light, telephone company employees failed to report to work?

A. I do not have any definite information.

Q. Do you have any information with respect to whether policemen failed to get to their jobs?

A. I do not have that information.

Q. Do you have any information with respect to what the actual traffic flow was during the two-day strike?

A. My observations are what I have on that. I did drive [fol. 156] around many parts of the city during the rush periods and did observe quite a bit of congestion at certain locations, which I believe did not exist before the transit strike started.

Q. Sir, I want to read to you from a news article in The Kansas City Times of Thursday, November 16, 1961, column 4, page 2. This news article quotes Colonel William Canaday, Superintendent of Operations for the Police Department, and this is the question: "We had a few bottle-necks, as we usually do, but they were straightened out quickly. We had traffic supervisors in the field all over the city watching the situation. They reported that everything seemed to be moving smoothly. The principal tie-ups occurred, again briefly, in the vicinity of 31st and Main Streets and at 31st and The Paseo, but we had enough men assigned in those areas that we got things moving quickly. We kept extra traffic control men on duty." Again, is your observation with respect to traffic flow in accord with what is reported to be Colonel Canaday's observations?

A. I agree with him that the police did an excellent job. From my observations I do repeat that at certain locations there was tremendous congestion and traffic moved very slowly through that area, and it took considerably more time to go through than it did prior to the strike.

Q. Do you agree with him that in general everything [fol. 157] seemed to be moving smoothly?

A. I don't know what you mean, "moving smoothly". There was no serious accidents as a result of it. It just took more time.

Q. How much more time, sir?

A. Well, in one particular instance that I timed myself on, it took just about twice the time.

Q. How much is twice the time, sir?

A. Instead of taking 20 minutes it took 40 minutes.

Q. So if one started 20 minutes earlier, one would get to where one wanted to go on time?

A. That's right.

Mr. Dunau: I have no other questions.

Mr. Siddens: That is all.

(Witness excused.)

H. ROE BARTLE, being sworn, testified:

Direct examination.

By Mr. Siddens:

Q. State your name, please, sir.

A. H. Roe Bartle.

Q. What is your position?

A. I am the mayor of Kansas City, Missouri, sir.

Q. How long have you been mayor of Kansas City, Missouri?

A. Six years, eight months, nine days.

Q. Mr. Mayor, you are, I am sure, aware of the recent strike that occurred on the Kansas City transit system on the days of November 14 and 15, 1961?

A. Yes, sir.

[fol. 158] Q. I would like for you to tell the Court what steps, what action you took with relation to that strike.

A. Well, in accordance with the authority given me by the ordinances of the municipality, I, as the titular head of the city would be called upon to impanel a group of experts in the field of transportation who might be able to devise ways and means of moving the populace with dispatch and order, if public transit was not available for them. Such a committee was impaneled and was instructed by me and their terms of reference prescribed, and within a matter of hours after they were impaneled, a temporary injunction was granted, and as a result they have been inactive from that day to this.

Q. Mr. Mayor, from your observations, what effects with relation to the mass transportation of people in Kansas City, Missouri, occurred as a result of this strike for two days?

A. Of course, speaking very personally, and that is my telephone, the number of people who would call the mayor, thinking that by magic he can put buses back on the street, to the point where—the populace, I realize, are wholly without knowledge, if Your Honor please, but they felt that the mayor had supreme power and the buses ought to be moving right now, if only he would tell them to move. There

was no question in my mind on the basis of the reports which I received from merchants that the sales were down. [fol. 159] Secondly, there were a number of individuals who felt that we should make transportation available to them through the emergency vehicles that are operated by the municipality, to wit, police cars, fire cars, those that are related to public works, and park department, water department, and the like. Most of the calls, and we kept two people on the phone constantly, were primarily from either employees in industrial plants or housewives that wanted to come to town.

Q. You mean that you got calls telling you that they could not get to their work?

A. That is correct, sir.

Q. And did you have many of those calls or not?

A. Well, our lines were jammed. I mean as far as the mayor of the city was concerned, I was involved from the time that our transit workers left the scene of action until they returned to their post of duty. There was practically nothing done, as far as I was concerned, except to try to help the public to understand that this was still America and if people wanted to strike they had that right and that privilege.

Q. Did you get any calls from people that wanted to go to doctors or hospitals and were unable to make it?

A. I had several calls of that nature in which we dispatched ambulances to take them to the hospitals, though they were not normally ambulance cases, but they indicated [fol. 160] that they were to have treatment of one kind or another and if they didn't get it that it would be an acute situation, and I felt that there was no need of arguing with people, time was of the essence, and that the city ought to try to cooperate and try to keep people as happy as they possibly could, if they were suffering from a physical disability or an ailment.

Q. From your experience as mayor, what effects would occur if this strike had continued for a prolonged period of time, say a month or two months or three months?

A. Well, Counselor, I think it would be very difficult for me to tell the Court what the true effect would be. That I do not know; I could only predicate an answer on the basis

of a spirit of unrest. When I called for group riding, which I did, through all news media, people were cooperative. I asked them to go to the normal bus stop to be picked up, and that happened, and people were helpful. I received calls saying that they didn't mind being put out for a day or two or three, or a week of waiting an hour to take somebody to work or to wait an hour to pick them up and bring them home, but it got to be monotonous after even a couple of days. I think we would have had some real difficulties in the matter of group riding. We had it during the war, and I think there is a lot of difference in war and in a local situation that affects only a city or a metropolitan area.

[fol. 161] Q. Now, you did call your committee together and they met to consider what measures could or should be taken. Did they not advise you with regard to that?

A. Yes; and I called them together on the basis of what they represented. I had the chairman of the Mayor's Advisory Committee on Traffic, Mr. Roland Petering, vice president of the Merchants Bank and Trust Company; and I had, which is required by ordinance, the Director of Traffic, which is Mr. Jack Faliñ, traffic engineer. It is also required that the City Manager act as the chairman of the committee after the Mayor appoints it, and this committee advises the Mayor as to what they shall do. And I selected Mr. Frieling, representing the Downtown Committee; I asked Mr. Austin, representing the downtown merchants; I asked Mr. Bedell, representing the Industrial Commission of the Chamber of Commerce, being Industrial Commissioner and knowing all the industrial plants in the periphery of Kansas City; I had Colonel Clarence Kelley, the Chief of Police; I had Lieutenant Colonel William Canaday, Chief of Operations of the Police Department; I had Mr. Harry Woodard, who is the president of the Building Managers Association, for in downtown Kansas City I felt that the building managers would have to cooperate if we were to invoke the ordinance which would require group riding and a staggering of hours.

Now, when I set up the terms of reference for this committee, Your Honor please, I merely asked for advice, and I said, "I do not want to invoke any of the authority that is granted to the mayor unless it becomes absolutely essen-

tial and necessary." I do not believe in trying to regulate the public unless it is a real crisis; and I sensed that the public was cooperating in this matter. I might say—it was not illegal, I would say it was extra-legal. I may have gone above and beyond my duly constituted authority, but the ordinance says the taxicabs can only take one fare, or if you have a party, only your party can ride in a taxicab. I did call all of the taxicab operators in Kansas City and said, "Your drivers can pick up as many people as they want, as long as they do not overcrowd their cabs; they may collect fares from all who are involved." I felt we were rendering a service to the public. I did not in any fashion want to favor the taxicab companies, but I did want to favor the public.

Q. Now, was it your view that if this strike had continued, or if, in fact, it should be resumed, would you feel it necessary to assume new measures to cope with the problem?

A. I would not assume any new measures, but I think that I would ask the Mayor's Committee as appointed under the emergency order to make their recommendations relative to staggered hours, and I would in all probability invoke it in a matter of 24 or 48 hours if the strike was renewed. I had said to the Committee in prescribing their terms of reference, "I do not want any report from you for 24 hours; I want to see if we can cope with the situation. If we do not cope with the situation in 24 hours, then I want a definite plan that we can put into action in a matter of minutes."

Q. Did you feel that this was in the public interest to do these things?

A. I so thought or I would not have impaneled the group.

Q. And do you feel that this strike endangers the public interest?

A. If I had not so felt I would not have impaneled the Committee nor would they still be prepared to move into action, for I told them that I would give them two hours as an alert, expecting them to meet in my office in case of necessity.

Mr. Siddens: That is all.

Cross examination.

By Mr. Dunau:

Q. Sir, may I ask you a few questions?

A. Yes, Counselor.

Q. I believe you stated that your office had received calls from employees in industrial plants saying that they needed transportation to the plant, is that correct, sir?

A. That is correct, sir.

[fol. 164] **Q.** Are you able to tell us how many such calls were received?

A. I could not tell you exactly the number of calls, because they were taken by my secretariat and were reported to me. I merely took those calls, Counselor, on the basis that if there were several in one plant, knowing the key personnel in our primary industries, I would call the head of that industry and say, "Will you organize group riding in your plant, please? We want to help if we can, but we believe you can do a better job with your folk than we can by using the news media to get community cooperation."

Q. Did you receive any calls, sir, from managers of industrial plants stating that they were being understaffed during the period of the two-day strike?

A. Only four or five calls, Counselor, from key men who said that some of the personnel who weren't on the job were important to the efficient operation of the plant and he thought something ought to be done about it. Those calls I classified as routine; I did not feel that I could discriminate for or against a big plant or a little plant. I felt that it was a community problem, and I therefore did not involve myself by saying, "What can the city do to help your plant?" because I thought we had to help them all or we couldn't help any of them.

Q. Sir, can you tell me about how many industrial plants there are in the metropolitan area of Kansas City?

[fol. 165] **A.** Sir, I would have no knowledge without checking the tax books of Kansas City.

Q. As a stranger to your community, can you tell me what the total population is, approximately, of the Kansas City metropolitan area, by which I include Kansas City, Missouri, and Kansas City, Kansas, sir?

A. We will include the metropolitan area, which would include the two Kansas Cities that you mention, the City of Independence, the capital city of this county, North Kansas City, and our bedroom or satellite communities, would run about a million-one hundred thousand. The last best estimate I had was 1,097,000.

Q. Now, are you able to tell us, sir, how many calls you got from people who said they needed transportation to doctors and hospitals and did not have any available?

A. I would merely make an estimate, and the estimate would be in excess of a dozen. On the basis of my own interrogation I discovered that our outpatient clinic, which is a charitable clinic, was off considerably during this period, because 90 per cent of those people do have to depend upon public transportation to get to and from the outpatient clinic. I did not go to any great length to ascertain what the percentage was, or whether it was big or whether it was small. I merely called to see whether or not it was an emergency in which I ought to ask some physicians or [fol. 166] some Public Health people to be in this commission that I set up very quickly to deal with the transportation problem.

Q. And did you have a representative from that group on the committee?

A. No, I did not, sir.

Q. Did you then conclude that that was not a sufficient problem?

A. I did not conclude that it was of sufficient importance at that particular moment. I called one Public Health man, who is a part of the staff of the municipality, and I called a man who is the chief of staff of General Hospital, who is a volunteer physician, chief of the volunteer staff, and asked both of them to make surveys, that if it was necessary I would call them in, but if you will permit me, Your Honor, and Counsel, I want to say that I knew that if I did that, that the news media would pick it up, and I wanted no hysteria in Kansas City, and that is the reason that I did not bring them into the picture. I felt that this is just one of these things that happen ever so often in public life, and there is no need to bring the public to the point of

hysteria when there is machinery set up to try to cope with the problem.

Q. Sir, while I think I quite understand there would be an inconvenience to any city from an interruption of mass transportation, can you, granting that such inconvenience [fol. 167] would necessarily exist, give us your judgment as to whether, if a transit strike were to take place, a system of staggered hours, group riding, extra-legal taxicab riding would be approximately enough to get people to go where they wanted to go.

A. I would say that it would greatly inconvenience the public, and I must say, as a student of the human equation, people in America want not to be inconvenienced. As a servant of the people, Counselor, I must say that everyone feels that the mayor can solve their problems, and whenever there is an interruption in mass transportation, the mayor of this city has headaches extraordinary coming from the public, most of whom do not understand even legal procedures that are involved and the techniques of management and labor.

Q. Would you in your judgment, sir, classify the situation that would result from a transit strike as being that of substantial inconvenience?

A. It would not; I think it would be a great inconvenience to the city, and I think, frankly, that it would have an effect upon the economy of the city, I think our economic structure would be affected. I cannot help but so feel on the basis of surveys that I made with management.

Q. Would you say, sir, that the primary economic effect would be upon retail sales in the downtown area of Kansas City?

[fol. 168] A. That is definitely correct: It would be advantageous to shopping centers; it would certainly hurt the hard core of the city which is known as downtown Kansas City, our large stores doing a retail business. I do not think that a transit strike would in any way affect distribution or wholesale in any fashion, only in minor ways.

Q. Whose services, I presume, would continue?

A. I would say they would have to continue, and I would say if there was a strike that I would expect the Mayor's Commission to find some way for additional ambulance

service and additional cooperation. For example, during this period our fire fighters were brought to the fire stations by fire equipment, because we do have radio communication within a district. Our police officers were brought in police cars, because we do have the radios. It isn't the inconvenience that it would have been, nor are we gambling with the health and the welfare of mankind as they would have twenty years ago, without radio.

Q. I see, sir. So that in your ultimate judgment it would be a substantial inconvenience but not the kind of a thing where we are gambling with health welfare in a hospital sense, a public utility service sense, a prison sense; police stations would continue to operate, for example?

A. Police stations would continue to operate; hospitals would continue to operate; fire stations would continue to [fol. 169] operate, but at an added cost to the taxpayers because of a reorganization that would have to be made, and I believe we are in a position in a city of this size, Your Honor please, to cope with any problem, even though there be a shortage of tax dollars to adequately finance the normal program of municipal government.

Q. And I take it that that would include, for example, approximately normal functioning of public utilities like light, gas, telephone?

A. I had no requests from any of the utilities for any extra help from the municipality. Normally, when we are in a critical situation in Kansas City, Counselor, the municipality calls upon the utilities for help. It is usually our asking them instead of their asking us.

Q. And lastly, sir, I take it that one would expect that the industrial plants, barring inconvenience, would operate substantially normally?

A. I believe that is correct. I do not believe that it would keep them from operating; I believe they would have to work out some kind of a plan, which the municipality would help them implement, because I think that is the obligation of the municipality in the light of the ordinances of our city.

Mr. Dunau: Thank you, Mr. Mayor.

Redirect examination.

By Mr. Siddens:

Q. Mr. Mayor, from what you have said, though, it would [fol. 170] affect the public interest, health and welfare, wouldn't it, if this strike had continued?

A. Well, that is self-evident. I don't think there is any question on that score; you merely have to rearrange your program of life and liberty.

Q. Because of interruption of business, some people would have been laid off and they would have been without jobs, wouldn't they?

A. I am sure that is true in the retail area.

Q. And that would affect the public interest, wouldn't it?

A. It would certainly affect the banking interests of Kansas City.

Q. It would affect the employees involved, wouldn't it?

A. That's right.

Q. They would be without jobs and without earnings?

A. Yes, sir.

Mr. Siddens: That is all.

Mr. Dunau: Nothing further, sir.

The Court: Thank you, Mr. Mayor.

The Witness: Thank you, Your Honor.

(Witness excused.)

Noon recess.

[fol. 171]

AFTERNOON SESSION

FORREST W. GARRISON, was duly sworn:

Direct examination.

By Mr. Siddens:

Q. State your name, please.

A. Forrest W. Garrison.

Q. What is your business or occupation?

A. I'm a police officer, Kansas City, Missouri, Police Department.

Q. What rank?

A. Captain, sir.

Q. How long have you been a member of the Kansas City, Missouri, Police Department?

A. Twenty-two years, sir.

Q. What capacity or what particular area of police work do you now serve in?

A. I am presently assigned to the Traffic Safety Bureau.

Q. And have you in the past served other divisions or parts of the Department?

A. Yes, sir, I have.

Q. Did I ask you how many years?

A. Yes, sir.

Q. Now, Captain, I would like to direct your attention to November the 14th and 15th of this year, 1961, in which there was a strike of the transit workers, and a stoppage of the transit service in Kansas City. I would like for you to tell the Court what actions the Police Department took with respect to that work stoppage and stoppage of public transit.

A. All right, sir. May I refer to my notes? Does any [fol. 172] body have any objection?

Q. Yes, you may.

A. On these two dates that you speak of we had received advance notice of this and preparing for it we brought in all of our traffic officers, our motorcycle officers, and it was necessary that we work them approximately 12 hours on both days to accommodate the heavy flow of traffic which resulted as a result of the transit strike. Now, on the second day of the strike we experienced some adverse weather conditions and it was necessary that we use additional officers assigned to traffic to handle the flow of traffic on our, particularly on our 4:00 to 6:00 rush hours.

Q. Now, Captain, assume that this transit stoppage had extended for a longer period of time, for a couple of months for example, what plans had you made and what would be the results and what adverse effects did it have or would it have?

A. Well, had this strike continued for an indefinite period

of time, due to the fact that we are limited in our personnel in traffic with officers that are trained to handle traffic moving and traffic problems, it would have been necessary to draw on additional law enforcement officers not assigned to traffic, which would have impaired our over-all efficiency as a law enforcement agency in Kansas City.

Q. What would have been the effect upon the ability of [fol. 173] the men assigned to traffic to continue on working 12-hour shifts?

A. Well, we could work them 12 hours and we have worked them 12 hours a great many times here in Kansas City. The only thing it is fatiguing and after a period of time your efficiency goes down as a result of these assignments.

Q. That is, if this stoppage had continued for, say, a month or two months, would the efficiency of the department have been affected?

A. Yes, sir, your efficiency of your traffic officers assigned to this particular assignment would have been affected.

Q. And what would have been the effect on the general picture with respect to crime prevention and detection?

Mr. Dunau: If Your Honor please, I have an objection to this line, it is getting terribly speculative, what would happen if there were too much strike, and if police officers had to work 12 hours during a two months' strike and going down to crime detection seems to me—you might ask if he has an opinion on that.

By Mr. Siddens:

Q. Do you have an opinion on what the effect would be if there were a prolonged strike of a month or two months on the efficiency of the Department on the entire crime picture in Kansas City? Do you have an opinion, the question is?

A. Yes. My opinion—

[fol. 174] Q. Do you have an opinion?

A. Yes, sir.

Q. All right. What is that opinion?

Mr. Dunau: I reiterate the objection.
The Court: Sustained.

By Mr. Siddens:

Q. Well, can you state whether or not at—well, let's put it this way. If the strike had continued would or would not it have been necessary to draw upon other elements of the Police Department to aid in traffic control?

A. Yes, sir, it would have.

Q. When you draw upon that assistance from other parts of the Department, does that have an effect upon the crime rate in Kansas City?

A. It would have, sir, it would take away officers that normally their attention is directed towards crime prevention.

Mr. Siddens: You may examine.

Cross examination.

By Mr. Dunau:

Q. Captain, assuming that the strike had continued beyond two days, in your judgment is it likely that once the traffic pattern had become established so that people knew they were going to get into town by group riding, that you would not have needed the number of men later as you needed the first few days?

A. Well, sir, this is possible. However, with not a definite pattern to go on I don't think I could give you a [fol. 175] definite answer on this.

Q. In your judgment how long would it take, for example, before a pattern were established of car transportation to the downtown Kansas City area so that people were accustomed to the traffic problem and therefore you could reduce the number of officers that you had to have at the outset?

A. Well, sir, I think probably to look into this and to give you a definite answer we would have to anticipate our parking, our weather, our accident and our injury rate that would result as an increase of cars on the street, and having no guide line to go by it is kind of indefinite for me to say to you that this answer would be yes or no.

Q. But it is at least possible that you would not need the same number of officers if the strike continued as you needed during the first days of the strike?

A. Well, the only thing I can answer on that is we have figured through our traffic engineers and our Missouri Highway Commission that we have approximately two hundred or two hundred and fifty thousand cars use our streets a day in Kansas City and with increase which would run approximately 20 per cent I would say yes, we would have to have more officers present to control this traffic.

Q. Assuming you would have to have more officers present, would you have to have as many as time went on as you had at the outset?

[fol. 176] A. Oh, probably prolonged in experience it is possible that we would not, sir.

Q. Now, your answers I think were given on the assumption that the strike would last for a month and that if it lasted for a month or two then you might have some deleterious effect on the officers by virtue of working 12 hours and by virtue of having non-traffic officers in to the traffic. Now, if the strike lasted less than thirty days would you anticipate such a problem?

A. Well, we would have to use our officers and probably work them 12 hours a day so yes, we would have the fatigue problem there.

Q. Would you have a problem, do you anticipate, in terms of crime detection?

A. It is very likely, sir, because the administration or the head administration of the Department probably foreseeing this would take necessary steps to transfer adequate personnel to the Traffic Safety Bureau and as a result some of our other duties would probably have to go without anybody to work on them.

Q. That is on the assumption, of course, that experience would not demonstrate that you needed less personnel as time went on, on the traffic problem?

A. Well, at first, yes, we would definitely need this. Now, what our experience would show would have to remain to [fol. 177] be seen. I don't think I could give you any definite statement on that.

Q. Sir, what was the traffic experience during the two days of the strike, in your judgment?

A. Well, we had, of course, an increase in our traffic, and we had officers, two officers assigned to our main intersec-

tions and on our main thoroughfares and turning off our lights and directing through on manual controls they kept busy for the time that they were out there on our 7:00 to 9:00, 4:00 to 6:00, which is our traffic rush hours in Kansas City.

Q. Was the traffic running fairly well, though?

A. Yes, with the exception of on certain thoroughfares in Kansas City where we have an unusual heavy amount of traffic, they were backed up in some instances clear downtown from—may I cite an example, sir?

Q. Surely.

A. From 39th and Gillham we had them backed up down to 19th and Oak. Now, here, of course, Gillham is fed by about three or four streets and being one of the main thoroughfares to the southwest part of the city, we experienced difficulty on this both nights and both days.

Q. Was your difficulty on the second night as a result of the weather?

A. This had a great deal to do with it, sir, and, of course, [fol. 178] the vehicular accidents that we experienced.

Q. Would that have been true whether or not there had been a mass transportation strike?

A. Well, I don't think there would have been the odds there that you have to combat with the increased influx of the amount of traffic. Now, on any adverse weather conditions we do have a certain amount of vehicular accidents and we expect this.

Q. Sir, I want to read to you what is quoted in the Kansas City Times, Thursday, November 16th, on Page 2, Column 4. The news article quotes from Colonel William Canaday, Superintendent of Operations for the Police Department. The quotation is as follows: "We had a few problems as we usually do but they were straightened out quickly. We had traffic supervisors in the field all over the city watching the situation. They reported that everything seemed to be moving smoothly. The principal tie-ups occurred again briefly in the vicinity of 31st and Main Streets and at 31st and The Paseo but we had enough men assigned to those areas that we got things moving quickly. We kept extra traffic patrolmen on duty."

Would your judgment coincide with what was quoted by Colonel William Canaday?

A. Yes, sir, because he is my commanding officer.

Q. Independently of his commanding status?

[fol. 179] A. No, I mean this information either came from my office or from my lieutenants and the sergeant.

Q. Your judgment, then, would be in accord with this quotation?

A. That's right.

Mr. Dunau: I have nothing further.

Redirect examination.

By Mr. Siddens:

Q. Captain, you mentioned something about the weather.

A. Yes, sir.

Q. On, I believe, the second day of this strike there was a definite threat of a snowfall here, wasn't there?

A. Yes, sir, there was, very definite.

Q. What would have happened if we had a substantial snowfall or at any time while there was a work stoppage on the transit system, a substantial snowfall, and it is possible to have them this time of year, isn't it, November and December, January and February? If we had had a substantial snowfall and not transit, what would have happened as far as this town is concerned?

A. Well, our past experience I would say we would have experienced a paralysis of our traffic.

Mr. Siddens: That's all.

Mr. Dunau: I have no further questions. Thank you, Captain.

(Witness excused.)

Mr. Siddens: I believe that's all the evidence the State [fol. 180] has to offer at this time, Your Honor.

Plaintiff Rests

Mr. Dunau: We have nothing further, Your Honor.

Evidence Closed

(Colloquy outside the record.)

STATEMENT OF MR. DUNAU

Mr. Dunau; I do want to make a very brief statement on the record as to what we are preserving.

If Your Honor please, as of course Your Honor is aware, the Supreme Court of Missouri, in State of Missouri versus Local No. 8-6, Oil, Chemical and Atomic Workers International Union has passed for its purposes on the King-Thompson Act. It has ruled that the King-Thompson Act is not pre-empted by the Taft-Hartley Act. It has also ruled it is not vulnerable to attack on the 1st and 14th Amendment grounds. It would be pointless for us to argue to Your Honor in view of that decision that these questions are still open before you so on those questions I simply want to state we are preserving those points but do not argue them to Your Honor.

There are two additional points which in our view are not foreclosed by the decision of the Missouri Supreme Court and which we do address to Your Honor. The first is the question of the existence of a state of jeopardy to interest, health and safety within the meaning of the King-Thompson Act. In the decision of the Supreme Court of [fol. 181] Missouri in the Oil, Chemical and Atomic Workers case, the Supreme Court noted as follows: "It is quite clear that the patrons of Laclede Gas Company were not furnished with safe and adequate service after the strike began. The strike had been in progress for five days before the Governor exercised his emergency powers and it was four days later before the State filed suit. The evidence demonstrates conclusively that the public health, safety and interest was jeopardized and that the Governor had reasonable cause to take action."

In our view on the record in this case there was no reasonable cause to take action. All that the record establishes by way of jeopardy is that there would be a reduction in the retail sales in the downtown Missouri area. We hardly think that a reduction in the retail sales in the downtown Missouri area constitutes jeopardy to interest, health and safety within the meaning of the King-Thompson Act.

I think that the point we want to make was epitomized in the testimony of Mr. Austin who stated that the \$5.00

sale of a tie you do not make today you do not make. That may be true, I rather doubt it, but whether or not you make it, you do not jeopardize interest, health and safety by not making that sale. That is all that this evidence shows concrete with respect to an effect upon the community.

[fol. 182] I think the testimony of the Mayor was quite accurate. Substantial inconvenience no doubt would result but substantial inconvenience is not jeopardy to interest, health and safety. His Honor told us that the hospitals would continue to function, the police stations would continue to operate, public utilities would continue to function, industrial plants would continue to work. That is all that one can expect in a contemporary community if the right to strike is to be preserved at all. And the King-Thompson Act does not purport to destroy the right to strike, it purports to regulate public utilities when there is a strike. On this record there is no such showing.

Now, with respect to testimony that the company might be hurt as a result of a long strike, that may be entirely true, that is exactly what a strike is supposed to do, it is supposed to injure the company but injury to the company, if that would have materialized, is hardly jeopardy to interest, health or safety. If this statute is truly to be construed and be concerned with protecting the community in services it can expect rather than protecting the employers from the damage by strike.

We were also told the employees themselves would be hurt by going out on a strike, they would lose wages, for example. That's entirely true. That's what happens when employees go out on strike, but these people who over-[fol. 183]whelmingly voted to go on strike should be their own best judge as to whether they are willing to risk the loss of wages.

So our first point which we think is open still on the basis of the decision of the Missouri Supreme Court is that on this record there has been no showing of any jeopardy to interest, health and safety to an extent necessary to invoke the King-Thompson Act.

On the second point I should like to hand up to Your Honor a short memorandum. Independently of the existence of the Taft-Hartley Act we think that in this case the

State of Missouri is precluded from acting at all. I think I can make my point most clearly by looking to the temporary restraining order which was issued in this case. It says, "It is ordered that the defendant shall cease continuing, inciting, supporting and participating in any work stoppage, refusal to work and strike against the State of Missouri or Kansas City Transit, Inc."

The temporary and permanent injunctions which are sought request a cessation of a strike to do the things mentioned in Paragraph 1 of this prayer and Paragraph 1 of the prayer was a prayer for a temporary restraining order which would restrain a strike against the Kansas City Transit, Inc.

Kansas City Transit, Inc., operates in Kansas and Missouri. There is no constitutional power in the State of [fol. 184] Missouri to enjoin a strike against the Kansas City Transit, Inc., without the State of Missouri. The State of Missouri has no power to have its statutes operate extraterritorially.

Now, it will be no answer, it seems to us, to say, as I rather anticipate the State will say, that we are willing to include in any injunction which is issued by this Court a statement that it is not to extend beyond the borders of Missouri. We think that is no answer because on the basis of the integrated kind of operation which the Kansas City Transit, Inc., conducts it is impossible to stop a strike in Missouri and to continue it in Kansas. If Missouri has the power to stop the strike in Missouri, it has the power to stop it in Kansas, willy-nilly. This statute must operate extraterritorially and in our view there is no power in the State of Missouri as applied to this situation to operate where the effect of the statute would extend itself outside of the State of Missouri.

Our point very briefly was summarized in Cooley, Constitutional Limitations, "The legislative authority of every state must spend its force within the territorial limits of the state. The legislature of one state cannot make laws by which people outside the state must govern their actions."

This, it seems to us, is what the effect of the King-Thompson Act is as applied to this situation for we have [fol. 185] here an interstate business, not simply a busi-

ness whose operations affect interstate commerce, a business whose operations is in the pure sense interstate business. There is an interstate journey from Kansas to Missouri. You cannot practically conduct a Missouri operation without also conducting the Kansas operation. You cannot discontinue the Kansas operation without interrupting service in Missouri. We, therefore, think this statute operates extraterritorially in this situation and for that reason cannot be validly applied in this situation. Now, coequal ground, which is the same one here which I shall mention in just a minute, is that which I have said pertaining to extraterritorial operation, but independently of that, the commerce clause of the Constitution itself, it seems to us, prohibits state action in a situation where the action pertains directly to interstate journey. The power to regulate an interstate strike is the power to regulate interstate commerce and regardless of any Congressional action which may be taken, even if there is no Congressional action, a state has no power to regulate interstate commerce. It could not compel, it would have no power to compel a trip from Missouri into Kansas under the commerce clause, it could not compel that trip, it could not stop that trip. It is simply powerless to act in that situation.

If Missouri has the power to require service, Kansas [fol. 186] must at least have the power not to require it. If Missouri has the power to require it one way, Kansas must have the power to require it another way. But since we are dealing with a single interstate journey you cannot have two systems of law operating upon that one situation, and we quote from the Supreme Court in this situation, "The power of Congress to regulate interstate commerce"—whether or not it has actually been exercised—"is necessarily exclusive whenever the subjects on it are national in their character or"—and this is the significant part for our purposes—"or admit only of one uniform system, or plan of regulation."

There cannot be as to an interstate exercise like the Kansas City Transit Company two potential lawmaking authorities, Kansas and Missouri; that kind of a situation has to be regulated by Congress if it is to be regulated at all and that proposition stands whether or not Congress

has enacted a law on that subject. We have elaborated this point in our memorandum and I think that suffices for our purposes at this point, Your Honor.

The Court: Does the size of the Kansas operation as distinguished from the size of the Missouri operation have any bearing on your position?

Mr. Dunau: The Kansas operation is, from our point of view, a more compelling situation for the application of [fol. 187] our theory for the reason that the Kansas City Transit Company is an interstate business, it operates across state lines, and the Missouri case, the case involving the public utility in Missouri, is not an interstate business in the sense its business crosses state lines; it affects interstate commerce in the sense that it requires shipments across state lines for use in its own business. I think this is the reason why we are able to make the last point we have made here and which was not available in the first case decided by the Missouri Supreme Court. It is also the reason why we think clearly in this situation the Taft-Hartley Act has excluded any state action but that I think is something that the Missouri Supreme Court has resolved against us and is not open here.

Now, Your Honor has suggested however, which I should make very clear, under the jurisdictional standards of the National Labor Relations Board at the present time there is no question that the Kansas City Transit, Inc., is subject to the Taft-Hartley Act and the regulation of the National Labor Relations Board. With respect to public utility operations, of which the transit company is one, the National Labor Relations Board exerts jurisdiction if either the total volume of the utility's business is \$250,000.00 a year, in our case it was eight million, or if it is less than two hundred fifty thousand dollars, if it acquires [fol. 188] \$50,000.00 worth of goods from out of the state. Clearly the Kansas City Transit, Inc., acquires revenue in excess of \$50,000.00 from interstate journey so there is no question that this enterprise is subject to the jurisdiction of the National Labor Relations Board.

Mr. Siddens: Well, I think I for the most part tend to preserve any argument by written statement here but I am going to mention one thing that counsel has brought out. He mentions the fact that because the company may

be hurt there can be no public interest involved. Now, I don't think it takes explanation to point out that if the company is hurt to the point that the company fails, then the community ceases to have public transportation; that affects public interest. I think it is obvious. I don't believe that it is necessary to have direct evidence on that proposition.

I don't believe I am going to comment further on these other matters at the present time.

The Court: Anything more on the record?

Mr. Siddens: No.

Mr. Dunau: No.

The Court: I will take this matter under advisement and rule on it later this afternoon.

[fol. 189] Thereafter, on the same day, Tuesday, November 28, 1961, the following was entered of record:

Wherefore, it is ordered and adjudged by the Court that the temporary restraining order and order to show cause, heretofore entered herein, be and the same is hereby continued in effect until the further order of the Court.

[fol. 191]

IN THE CIRCUIT COURT OF JACKSON COUNTY

STIPULATION RE RECORD—Filed December 22, 1961

Come now State of Missouri, Plaintiff herein, and Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al., Defendants herein, by their attorneys, and stipulate and agree that the evidence heretofore introduced herein on November 27 and 28, 1961, may be considered by the Court on both the temporary and permanent injunction.

Filed Dec. 22, 1961

[fol. 192]

IN THE CIRCUIT COURT OF JACKSON COUNTY

DECREE—February 12, 1962

This cause having heretofore duly come on for hearing on November 27 and 28, 1961, on the plaintiff's temporary restraining order and order to show cause heretofore issued by the Court on November 15, 1961, at which time the defendants appeared by their attorneys, John J. Manning and Bernard Dunau, and presented evidence, and the plaintiff, State of Missouri, appeared by J. Gordon Siddens and Julian L. O'Malley, Assistant Attorneys General of the State of Missouri, and presented evidence, and the Court having taken the matter under advisement, and thereafter the parties, by their attorneys, stipulated and agreed "that the evidence heretofore introduced herein on November 27 and 28, 1961, may be considered by the Court on both the temporary and permanent injunction," and the Court having studied the briefs and arguments of counsel and being fully advised in the premises finds the issues in favor of the plaintiff and against the defendants.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the defendants, and all of the persons to whom notice of this order of injunction may come, be and they are hereby permanently enjoined and restrained from continuing, inciting, supporting and participating in the work stoppage, refusal to work and strike against the State of Missouri.

[fol. 193] It Is Farther Ordered that defendants' motion to dismiss be denied and that the costs of this proceeding be adjudged against the defendants, for which let execution issue.

Dated this 12th day of February, 1962.

J. Donald Murphy, Judge.

IN THE CIRCUIT COURT OF JACKSON COUNTY

NOTICE OF APPEAL—Filed February 21, 1962

Notice is hereby given that Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al., Defendants above-named, hereby appeal to the Supreme Court of Missouri from the Decree and Permanent Injunction entered in this action on the 12th day of February, 1962.

Dated February 19, 1962.

Filed Feb. 21, 1962

[fol. 197]

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI,
AT KANSAS CITY**

No. 639,507

STATE OF MISSOURI, Plaintiff,

vs.

**DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET,
ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF
AMERICA, et al., Defendants.**

Supplemental Transcript on Appeal

[fol. 198]

IN THE CIRCUIT COURT OF JACKSON COUNTY

ANSWER—Filed December 7, 1961

Now come defendants and for their answer to the petition for injunction state that:

1. Defendants admit the allegations of paragraphs 1, 2, and 3 of the petition.

2. Defendants admit the allegations of paragraph 4, except that they aver in addition that the employees of Kansas City Transit, Inc., and the members of Division 1287, Amaigamated Association of Street, Electric Railway and Motor Coach Employees of America are not limited in their work and residence to the state of Missouri but also live and work in the state of Kansas.

3. Defendants admit the allegations of paragraph 5, except as to the address which is 5701 Tracy, Kansas City, Missouri.

4. Defendants admit the allegations of paragraph 6, except that they deny that the service performed constitutes a "life essential," and except that they aver in addition that: (a) Kansas City Transit, Inc., operates under certificates of convenience and necessity issued by the United States Interstate Commerce Commission and the Kansas State Corporation Commission in addition to a certificate of convenience and necessity issued by the Public Service Commission of Missouri, (b) Kansas City Transit, Inc., also furnishes bus transportation exclusively in the [fol. 199] state of Kansas and interstate bus transportation between points in the states of Kansas and Missouri, (c) Kansas City Transit, Inc., operates about 81 round-trip miles in the state of Kansas, and (d) of the total round-trip route miles operated by Kansas City Transit, Inc., some routes operate exclusively within the state of Missouri, other routes operate exclusively in the state of Kansas, and others are interstate routes operating between the states of Missouri and Kansas.

5. The allegations of paragraph 7 are admitted, except that the persons employed are employed to furnish transportation service and to transact business in the state of Kansas in addition to the state of Missouri.

6. Answering the allegations of paragraph 8, the work and labor was done and performed in the state of Kansas in addition to the state of Missouri.

7. The allegations of paragraph 9 are admitted, except that the strike vote was taken on October 31 and Novem-

ber 1 and 2, 1961, and except that there was to be a cessation of work in the state of Kansas in addition to the state of Missouri.

8. The allegations of paragraphs 10, 11, and 12 are admitted, except that it is denied that the taking of possession of the property of the Kansas City Transit, Inc., was for use and operation by the state of Missouri or that it was in the public interest, and except that defendants [fol. 200] aver that the taking of possession was to insure continuation of operations in the state of Kansas in addition to the state of Missouri.

9. The allegations of paragraph 13 are denied, except that it is admitted that a strike took place on November 14 and 15, 1961, and that a dispute continues between Kansas City Transit, Inc., and Division 1287, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America concerning the terms of a collective bargaining agreement. It is specifically denied that any threatened or actual strike jeopardizes and/or threatens or jeopardized and/or threatened the public interest, health and welfare of the state of Missouri and of the inhabitants thereof.

10. Answering the allegations of paragraph 14, defendants aver that the employees have struck, and desire to strike, in furtherance of their collective bargaining demands made upon Kansas City Transit, Inc., and that defendants support and participate in such strike action. Defendants deny that any such strike action is a strike against or a refusal to work for the state of Missouri.

11. Answering the allegations of paragraph 15, Chapter 295, Revised Statutes of Missouri, 1949, is invalid and unconstitutional in that (a) it conflicts with and is preempted by the Labor Management Relations Act, 1947, [fol. 201] (b) it abridges federal rights conferred by the First, Thirteenth, and Fourteenth Amendments of the United States Constitution, and (c) as applied in this case, it operates extraterritorially, and therefore conflicts with the constitutional requirement that a State confine its authority within its own borders, and it directly regulates

interstate commerce, and therefore offends the Commerce Clause of the United States Constitution independently of implementing legislation by Congress. Further answering, the strike is not made unlawful by Chapter 295, Revised Statutes of Missouri, 1947, because there is no jeopardy to the public interest, health and welfare within the meaning of section 295.180 of the statute.

12. Defendants incorporate and make a part of this answer all the allegations and grounds stated by them in their motion to dismiss heretofore filed in this action.

Wherefore, having fully answered, defendants pray that the relief sought be denied in all respects and that the petition for injunction be dismissed, at plaintiff's costs.

Filed Dec. 7, 1961

[fol. 201a]

DEFENDANTS' EXHIBIT 1

PROCLAMATION

WHEREAS, after investigation, I find that there is a labor dispute existing between the Kansas City Transit, Inc., a public utility furnishing public passenger transportation service in the State of Missouri, and Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, recognized bargaining agent of the employees of the Kansas City Transit, Inc.; and

WHEREAS, after investigation, I find that as a result of such labor dispute there is a threatened strike on the part of the employees in Missouri of the Kansas City Transit, Inc., who are members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, which threatens the effective operation in Missouri of the Kansas City Transit, Inc.; and

WHEREAS, after investigation, in my opinion such threatened strike threatens to interrupt the operation in Missouri of the Kansas City Transit, Inc.; and

WHEREAS, after investigation, in my opinion the public interest, health and welfare are jeopardized;

NOW, THEREFORE, I, JOHN M. DALTON, Governor of Missouri, under and by virtue of the authority vested in me by the Constitution of Missouri and the statutes, including Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1959, do hereby proclaim as follows:

(1) That the continued operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a labor dispute.

[fol. 201b] (2) That interruption of the operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a threatened strike on the part of employees of the Kansas City Transit, Inc., who are members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.

(3) That the public interest, health and welfare are jeopardized as a result of the threatened interruption of the operation of such public utility.

(4) That the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1959, is necessary to insure the operation in Missouri of the Kansas City Transit, Inc., a public utility.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Missouri to be hereto affixed on this 13th day of November, 1961.

/s/ JOHN M. DALTON
Governor

Attest:

/s/ WARREN E. HEARNES
Secretary of State

/s/ AUSTIN HILL
Chief Clerk

[SEAL]

[fol. 201c]

DEFENDANTS' EXHIBIT 2**EXECUTIVE ORDER NO. 1****TO THE SECRETARY OF STATE:**

WHEREAS, there is a labor dispute existing between the Kansas City Transit, Inc., a public utility furnishing public passenger transportation service in the State of Missouri, and Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, recognized bargaining agent of certain of the employees of the Kansas City Transit, Inc.; and

WHEREAS, as a result of such labor dispute there is a threatened strike on the part of the employees in Missouri of the Kansas City Transit, Inc., who are members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, which threatens the effective operation in Missouri of the Kansas City Transit, Inc., a public utility; and

WHEREAS, in my opinion such threatened strike threatens to interrupt the operation in Missouri of the Kansas City Transit, Inc.; and

WHEREAS, in my opinion the public interest, health and welfare are jeopardized; and

WHEREAS, after investigation, I, JOHN M. DALTON, Governor of Missouri, by Executive Proclamation dated the 13th day of November, 1961, proclaimed:

(1) That the continued operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a labor dispute.

(2) That interruption of the operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a threatened strike on the part of employees of the Kansas City Transit, Inc., who are members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.

[fol. 201d] (3) That the public interest, health and welfare are jeopardized as the result of the threatened interruption of the operation of such public utility.

(4) That the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1959, is necessary to insure the operation in Missouri of the Kansas City Transit, Inc., a public utility.

NOW, THEREFORE, I, JOHN M. DALTON, Governor of the State of Missouri, by virtue of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1959, do hereby order as follows:

I hereby take possession of the plants, equipment, and all facilities of the Kansas City Transit, Inc., located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 11:59 o'clock, P.M., Central Standard Time, Monday, November, 13, 1961.

/s/ JOHN M. DALTON
Governor

Attest:

/s/ WARREN F. HEARNES
Secretary of State

/s/ AUSTIN HILL
Chief Clerk

[SEAL]

[fol. 201e]

DEFENDANTS' EXHIBIT 3

EXECUTIVE ORDER NO. 2

TO THE SECRETARY OF STATE:

WHEREAS, I, JOHN M. DALTON, Governor of the State of Missouri, after investigation, by Executive Proclamation dated the 13th day of November, 1961, proclaimed:

(1) That the continued operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a labor dispute.

(2) That interruption of the operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a threatened strike on the part of employees of the Kansas City Transit, Inc., who are members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.

(3) That the public interest, health and welfare are jeopardized as the result of the threatened interruption of the operation of such public utility.

(4) That the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1959, is necessary to insure the operation in Missouri of the Kansas City Transit, Inc., a public utility.

WHEREAS, by Executive Order No. 1, dated November 13th, 1961, I have taken possession of the plants, equipment and all facilities of the Kansas City Transit, Inc., located in the State of Missouri, for the use and operation by the State of Missouri in the public interest;

NOW, THEREFORE, I, JOHN M. DALTON, Governor of the State of Missouri, by virtue of the authority vested in me by Section 295.180 of the Revised Statutes of Missouri, 1959, do hereby order as follows:

[fol. 201f] (1) That Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as my agent, is

hereby authorized and directed to take possession of the plants, equipment and all facilities of the Kansas City Transit, Inc., in the State of Missouri or such parts of each of said plants, equipment and facilities as may be necessary for the purpose of carrying out the provisions of this Order, and to effect my Proclamation and Executive Order No. 1 declaring the public interest, health and welfare jeopardized, in order to insure that the said utility above mentioned is effectively operated in the interest of the people of this State to the end that they may have the benefit of necessary and essential public utility services.

(2) Said Daniel C. Rogers shall exercise the aforesaid authority as my agent forthwith, and he shall continue to exercise the aforesaid authority as my agent and unless otherwise directed by me.

(3) All rules and regulations of the aforesaid utility governing the internal management and organization of the company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri.

(4) This Order shall take effect at 11:59 P.M., Central Standard Time, November 13, 1961.

Done this 13th day of November, 1961.

/s/ JOHN M. DALTON
Governor

Attest:

/s/ WARREN E. HEARNES
Secretary of State

/s/ AUSTIN HILL
Chief Clerk

[SEAL]

[fol. 201g]

DEPENDANTS' EXHIBIT 4

SCHEDULE 1

Supplemental Decision and Certification of Representatives, with Appendix "A" thereto, of National Labor Relations Board, dated February 19, 1943, Case No. R-4705, and Stipulation between the parties to said Case, dated March 31-April 6, 1943.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. R-4705

In the Matter of

KANSAS CITY PUBLIC SERVICE COMPANY

and

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY & MOTOR COACH EMPLOYEES OF AMERICA, affiliated with the American Federation of Labor.

Supplemental Decision

and

Certification of Representatives

On January 25, 1943, the National Labor Relations Board issued a Decision and Direction of Elections in the above-entitled proceeding.¹ Pursuant to the Direction of Elections, elections by secret ballot were conducted on February 8, 1943, under the direction and supervision of the Regional Director for the Seventeenth Region (Kansas City, Missouri). On February 8, 1943, the Regional Director, acting pursuant to Article III, Section 10, of National La-

¹ 47 N.L.R.B., No. 1

bor Relations Board Rules and Regulations—Series 2, as amended, issued and duly served upon the parties an Election Report. No objections to the conduct of the ballots or to the Election Report have been filed by any of the parties.

As to the balloting and the results thereof the Regional Director reported as follows:

(1) TRANSPORTATION DEPARTMENT

Total on eligibility list	1,087
Total ballots cast	1,064
Total ballots challenged	32
Total blank ballots	1
Total void ballots	0
Total valid votes counted	1,031
Votes cast for Amalgamated Association of Street, Electric Railway & Motor Coach Em- ployees of America, Division 1287 (AFL)	648
Votes cast for Brotherhood of Railroad Train- men	379
Votes cast for neither	4

[fol. 201h]

(2) OTHER EMPLOYEES

Total on eligibility list	387
Total ballots cast	340
Total ballots challenged	16
Total blank ballots	0
Total void ballots	0
Total valid votes counted	324
Votes cast for Amalgamated Association of Street, Electric Railway & Motor Coach Em- ployees of America, Division 1287, affiliated with the American Federation of Labor	282
Votes cast against Amalgamated Association of Street, Electric Railway & Motor Coach Em- ployees of America, Division 1287, affiliated with the American Federation of Labor	42

In the Decision and Direction of Elections referred to above the Board made no final determination as to the appropriate unit. The Board stated:

If the employees in the Transportation Department select a bargaining representative other than the representative selected by the remaining employees, they will constitute a separate and distinct appropriate unit. If they choose the same representative as the remaining employees, they will be merged into a single unit with such employees.

Upon the basis of the entire record in the case, the Board makes the following:

SUPPLEMENTAL FINDING OF FACT

We find that all employees of the Company, including those in the Transportation Department, but excluding employees in the classifications listed in Appendix "A" attached hereto, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Certification of Representatives

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 2, as amended, IT IS HEREBY CERTIFIED that Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division 1287, affiliated with the American Federation of Labor, has been designated and selected by a majority of all employees of Kansas City Public Service Company, Kansas City, Missouri, including those in the Transportation Department, but excluding employees in classifications listed in Appendix "A" attached hereto, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division 1287, affiliated with the American Federation of Labor, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D.C., this 19 day of February, 1943.

(s) Wm. M. LEISERSON
Member

(s) GERARD D. REILLY
Member

NATIONAL LABOR RELATIONS BOARD

(Seal)

[fol. 201i]

DEFENDANTS' EXHIBIT 5

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. R-4705

In the Matter of

KANSAS CITY PUBLIC SERVICE COMPANY

and

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY &
MOTOR COACH EMPLOYEES OF AMERICA, affiliated with the
American Federation of Labor.

Stipulation

It is hereby stipulated by and between Kansas City Public Service Company and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, affiliated with the American Federation of Labor, and Joseph E. Watson, Regional Director, Seventeenth Region, acting as agent for the National Labor Relations Board

I.

That employees of Kansas City Public Service Company, whose duty it is to assist the operators of street cars and

buses by issuing transfers, taking tokens and otherwise aiding in loading buses and street cars are not "collectors" within the meaning of the Decision and Direction of Elections and Certification of the National Labor Relations Board.

II.

That "collectors" in Appendix A of the Supplemental Decision and Certification of the National Labor Relations Board issued in the above-entitled case is the same as "collectors" as described in footnote 4 of the Decision and Direction of Elections of the National Labor Relations Board issued in the above-entitled case, and that in both instances the word "collectors" refers to employees who are also known as "fareboxmen."

III.

It is further stipulated that the employees described in paragraph 1 hereof participated in the election held in the above-entitled case as employees within the appropriate unit, and that such employees are within the appropriate unit as found by the National Labor Relations Board, in its Decision and Direction of Elections and Supplemental Decision and Certification of Representatives.

(s) JOSEPH E. WATSON
Regional Director
Seventeenth Region
National Labor Relations Board

Dated at Kansas City, Missouri April 6, 1943

KANSAS CITY PUBLIC SERVICE COMPANY
By (s) POWELL C. GRONER

Dated at Kansas City, Missouri March 31, 1943

AMALGAMATED ASSOCIATION OF STREET,
ELECTRIC RAILWAY & MOTOR COACH
EMPLOYEES OF AMERICA, affiliated with
the American Federation of Labor
By (s) J. B. ALLTOP

Dated at Kansas City, Missouri April 6, 1943

[fol. 201j]

DEFENDANTS' EXHIBIT 6

(Western Union Telegram Form)

DUPLICATE OF TELEPHONED TELEGRAM

OCT 31 PM 4 18

404P CST OCT 31 61 KB402

SA339 S JCA991 PD JEFFERSON CITY MO 31 331P CST
 LOREN HARGUS, PRESIDENT DIV 1287 AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA

913 TRACY AVE KSC

IN VIEW OF THE REPORTED IMPASSE IN YOUR LABOR NEGOTIATIONS, I URGE THAT YOU ACCEPT THE SERVICES OF THE FULL MEMBERSHIP OF THE STATE BOARD OF MEDIATION FORTHWITH TO HEAR THE MOST IMPORTANT ISSUES AND MAKE RECOMMENDATIONS FOR SETTLEMENT

JOHN M DALTON GOVERNOR.

[fol. 201k]

DEFENDANTS' EXHIBIT 7

(Western Union Telegram Form)

919P EST NOV 1 61 KB486

SSA301 K LLD592 NL PD KANSAS CITY MO 1

LOREN HARGUS

913 TRACY KSC

IN RESPONSE TO YOUR TELEGRAM DATED OCTOBER 31ST PLEASE BE ADVISED THAT THIS LABOR ORGANIZATION WILL ACCEPT THE MEDIATION EFFORTS OF THE FULL STATE BOARD OF MEDIATION OR OF A SINGLE REPRESENTATIVE OF THAT BOARD PROVIDED THAT SUCH EFFORTS DO NOT INCLUDE HEARINGS WHICH RESULT IN RECOMMENDATIONS

**AMALGAMATED ASSOCIATION OF STREET
ELECTRIC RAILWAY AND MOTOR EMPLOYEES OF
AMERICA LOREN HARGUS PRESIDENT DIV 1287**

31 1287.

[fol. 2011]

DEFENDANTS' EXHIBIT 8

November 8, 1961

**TO ALL MEMBERS OF THE MISSOURI STATE BOARD
OF MEDIATION:**

This morning, at the meeting of this Board held at the Hotel President in Kansas City, Missouri, Mr. Daniel C. Rogers, Chairman of the Board, advised the representatives of the Kansas City Transit, Inc., and of Local 1287 Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America that the Board was here to attempt to settle the issues between the parties and suggested that the Union, as the moving party, should first present its position with respect to the wage issue and then, if it desired, could make any statements it saw fit concerning any other issues. Mr. Rogers stated that the hearing would be held along the lines set out in Governor Dalton's telegram. He then stated that the Board was not conducting a public hearing but that, however, if members of the public insisted upon attending the meeting the Board was not certain of their authority to prevent public attendance. Mr. Rogers then went on to state that the Board, after hearing the evidence of both of the parties, would make up its mind as to whether it would confine itself to purely mediatory efforts or whether it would make recommendations.

The following are direct quotations of statements made by Mr. Rogers at the meeting this morning:

1. "The Board reserves the right to make recommendations."
2. "The Board will not bind itself to be confined to mediations only."

3. "The Board will not bind itself to not make recommendations."

Representatives of the Union then stated to the Board members that the Union welcomed the efforts of any governmental agency and that they were present at the meeting for the purpose of accepting the Board's efforts to mediate only.

You are hereby advised that this Union is still agreeable to participating in any efforts of this Board to mediate this dispute so long as such efforts are of a mediatory nature. The Union will not, however, participate in any hearing of a public nature nor will it participate further in any proceedings with this Board unless the Board clearly states in advance, in writing, that it will not make recommendations, public or otherwise, and that it will confine its efforts to mediation only.

LOCAL 1287 AMALGAMATED ASSOCIATION
OF STREET, ELECTRIC RAILWAY AND
MOTOR COACH EMPLOYEES OF AMERICA

By _____
Loren Hargus, President

[fol. 201m]

DEFENDANTS' EXHIBIT 9

MISSOURI STATE BOARD OF MEDIATION

Kansas City, Mo.
November 8, 1961

Mr. Loren Hargus, President
Local 1287 Amalgamated Association of Street,
Electric Railway and Motor Coach Employees
of America, Kansas City, Missouri

Dear Mr. Hargus:

In response to your letter of November 8, 1961, personally handed to the members of the State Board of

Mediation of Missouri, convened at the Hotel President to hear a labor dispute between your union and the Kansas City Transit, Incorporated, you are hereby advised that subsection 2 of Section 295.080 of Revised Statutes of Missouri, provides that the State Board of Mediation—

“ . . . shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.”

The members of the Board are in unanimous agreement that the powers vested in the Board, as aforesaid, and as intended from the remaining provisions of the King-Thompson Act, justify the Board in its purpose to hear the issues in dispute and to exercise its mediation authority, including recommendations for settlement.

The Board of Mediation therefore requests the parties now before it to remain in session and to continue in mediation conferences as provided in subsection 3 of Section 295.080, Revised Statutes of Missouri.

Very truly yours,

MISSOURI STATE BOARD OF MEDIATION

By /s/ DANIEL C. ROGERS

Chairman

Room 132 State Capitol Bldg.
Jefferson City, Missouri

[fol. 201n]

DEFENDANTS' EXHIBIT 10

(Western Union Telegram Form)

1209A CST NOV 14 61 KB015

SA007 S JCA308 PD JEFFERSON CITY MO 13 1151P CST
LOREN HARGUS, PRESIDENT

DIVN 1287 AMALGAMATED ASSN OF STREET
ELECTRIC RY AND MOTOR COACH EMPLOYEES
OF AMERICA 913 TRACY AVE KSC

BY VIRTUE OF THE AUTHORITY VESTED IN ME
BY CHAPTER 295 RSMO, I HAVE TAKEN POSSES-
SION OF THE PLANTS AND FACILITIES IN THE
STATE OF MISSOURI OF KANSAS CITY TRANSIT,
INC., FOR OPERATION BY THE STATE OF MIS-
SOURI IN THE PUBLIC INTEREST, EFFECTIVE
11:59 PM, NOVEMBER 13, 1961. I HAVE DESIG-
NATED MR. DANIEL C. ROGERS MY AGENT FOR
THE OPERATION OF THE FACILITIES. KANSAS
CITY TRANSIT INC IS REQUESTED TO KEEP ITS
FACILITIES AVAILABLE FOR SUCH OPERATION.
EMPLOYEES OF KANSAS CITY TRANSIT INC WHO
ARE MEMBERS OF DIVISION 1287, AMALGAMATED
ASSN OF STREET, ELECTRIC RY AND MOTOR
COACH EMPLOYEES OF AMERICA ARE HEREBY
NOTIFIED TO CONTINUE TO PERFORM THEIR DU-
TIES OF EMPLOYMENT UNDER SUCH OPERATION

[fol. 201o] JOHN M DALTON GOVERNOR

295 RSMO 11XXXX 295 RSMO 11:59 PM 13 1961 1287.

148

[fol. 201p]

DEFENDANTS' EXHIBIT 11

DK 103 PD 3 EX NOV 17 1240P CST

DANIEL C ROGERS AGENT FOR GOVERNOR

JOHN M DALTON

ROOM 325 PRESIDENT HOTEL

KSC

THE SEIZURE PAPERS EFFECTUATING STATE SEIZURE OF THE PROPERTY OF THE KANSAS CITY TRANSIT INC EFFECTIVE AS 1159 PM ON NOVEMBER 13 1961 IS NOT CLEAR TO THE OFFICERS OF LOCAL DIVISION NUMBER 1287 WITH RESPECT TO WHOM WE SHOULD DEAL IN CASES OF PROCESSING GRIEVANCES AND DISPUTED ISSUES ARISING OUT OF THE OPERATION OF THE KANSAS CITY TRANSIT INC PROPERTY AND FACILITIES WHILE UNDER SUCH SEIZURE I WOULD APPRECIATE VERY MUCH A STATEMENT IN WRITTING FROM YOU, AS THE GOVERNORS AGENT, ADVISING ME AS TO WHOM WE MAY PROPERLY CONFER IN THE PROCESSING OF SUCH GRIEVANCES AND DISPUTED ISSUES

LOREN HARGUS

PRESIDENT LOCAL DIV 1287

GRA 1 0928

AMALGAMATED ASSOC OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA

SEND CONFIRMATION TO
LOREN HARGUS

913 TRACY

KSC

CFN FURNISHED

[fol. 201q]

DEFENDANTS' EXHIBIT 12

(Western Union Telegram Form)

457P CST NOV 17 61 KB509

SSD348 K DWA069 NL PD DW KANSAS CITY MO 17

LOREN HARGUS, PRESIDENT

LOCAL 1288 AMALGAMATED ASSOCIATION

913 TRACY KSC

AS DISCUSSED WITH YOU IN YOUR TELEPHONE INQUIRY THIS MORNING GRIEVANCE CASES AND OTHER RELATIONSHIPS BETWEEN YOUR UNION AND KANSAS CITY TRANSIT, INC, SHOULD BE HANDLED AND PROCESSED IN SAME MANNER AS HAD BEEN NORMAL AND CUSTOMARY PRIOR TO ISSUANCE OF EXECUTIVE ORDERS BY THE GOVERNOR. SEE SECTION NUMBERED (3) OF EXECUTIVE ORDER NO 2. I INFORMED MR D B EGRE AS ABOVE BY TELEPHONE IMMEDIATELY AFTER YOUR INQUIRY AND I AM SENDING HIM A COPY OF THIS REPLY TO YOUR TELEGRAM

DANIEL C ROGERS CHAIRMAN MISSOURI STATE BOARD OF MEDIATIONS.

[fol. 206]

[File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

EN BANC

[Title omitted]

**ALTERNATIVE MOTION (1) TO SUMMARILY AFFIRM THE JUDGMENT, OR (2) TO EXPEDITE THE APPEAL BY SUBMITTING THE APPEAL ON BRIEFS WITHOUT ORAL ARGUMENT—
Filed March 15, 1962**

Appellants alternatively move the Court either (1) to summarily affirm the judgment on the authority of this Court's decision in *Missouri v. Local No. 8-6, Oil, Chemical & Atomic Workers Union*, 317 S.W.2d 309, vacated as moot, 361 U.S. 363, or (2) to expedite the appeal by submitting it on briefs without oral argument, briefs to be simultaneously served within thirty days from the date of the order granting the motion to expedite the appeal.

In support thereof appellants show that:

1. This appeal is from a decree of the Circuit Court of Jackson County entered on February 12, 1962, adjudging that:

... the defendants, and all of the persons to whom notice of this order of injunction may come, be and they are hereby permanently enjoined and restrained from continuing, inciting, supporting and participating in the work stoppage, refusal to work and strike against the State of Missouri.

The decree was entered as a result of proceedings invoking the King-Thompson Act (Rev. Stat. Mo. 1949) in the following circumstances briefly stated: Kansas City Transit, Inc., is an interstate enterprise engaged in the business of transporting passengers by bus in and between [fol. 207] the States of Kansas and Missouri; its operations affect interstate commerce within the meaning of sections 2(6) and (7), Title I, Labor Management Relations Act, 1947 (61 Stat. 316, 29 U.S.C., Sec. 141) (Tr. 20-29, 31-32,

33-36; *Kansas City Public Service Co.*, 47 NLRB 1, 2). Appellant union is the exclusive bargaining representative, certified as such by the National Labor Relations Board, of a unit of employees of the transit company composed primarily of bus drivers and maintenance personnel (Tr. 28, 30, 31, 45, 98-99, def. ex. 4). Negotiations between the company and the union, looking toward accord upon new contract terms to succeed the collective bargaining agreement due to expire on October 31, 1961, reached an impasse on October 13, 1961 (Tr. 100-102, def. ex. 5, p. 3). Thereafter, on October 31 and November 1 and 2, 1961, the union conducted a strike vote by secret ballot among the employees resulting in a 681 to 74 vote in favor of a strike (Tr. 106).

Section 295.180 of the King-Thompson Act provides that the Governor of Missouri is authorized "to take immediate possession" of a public utility "after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of . . . a threatened or actual strike, . . . and that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility. . . ." In accordance with this provision, on November 13, 1961, the Governor issued a proclamation that the threatened strike against the company required him to exercise his authority to take possession of it in order to assure its operation (Def. ex. 1). On the same date, the Governor issued Executive Order No. 1 stating that "I hereby take possession of the plants, equipment, and all facilities of the Kansas City Transit, Inc., located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 11:59 o'clock, P.M., Central Standard Time, Monday, November 13, 1961" (def. ex. 2). Still the same day, the Governor issued Executive Order No. 2, designating the Chairman of the Missouri State Board of Mediation as his [fol. 208] agent to take possession (def. ex. 3). Section 295.200.1 of the King-Thompson Act makes "unlawful," after a utility has been "taken over," "any strike or concerted refusal to work . . . as a means of enforcing any demands against the utility. . . ."

At midnight November 13, 1961, the Union struck the Company and picketed its various premises (Tr. 106-107). The strike and picketing were discontinued in the evening of November 15, 1961, as a result of the issuance of a temporary restraining order by the Circuit Court of Jackson County, enjoining "any work stoppage, refusal to work and strike against the State of Missouri or Kansas City Transit, Inc." (Tr. 10, 107). During its continuance the strike and picketing were peaceful (Tr. 107). After hearing, the Circuit Court issued the final decree from which this appeal is taken.

2. Before the Circuit Court appellants resisted the action upon the following grounds:

(a) The King-Thompson Act is in conflict with and preempted by the Labor Management Relations Act, 1947.

(b) The King-Thompson Act abridges federal rights conferred by the First, Thirteenth and Fourteenth Amendments of the United States Constitution.

(c) As applied in this case, the King-Thompson Act (i) operates extraterritorially, and therefore conflicts with the constitutional requirement that a State confine its authority within its own borders; and (ii) directly regulates interstate commerce, and therefore offends the Commerce Clause of the United States Constitution independently of implementing legislation by Congress.

(d) The actual or threatened strike against Kansas City Transit, Inc., did not jeopardize the "public interest, health and welfare" within the meaning of the King-Thompson Act.

Grounds (a) and (b) have been heretofore decided adversely to appellants' position by this Court in *Missouri v. Local No. 8-6, Oil, Chemical & Atomic Workers Union*, 317 S.W.2d 309, vacated as moot, 361 U.S. 363. Grounds (c) and (d) are undetermined by and open under the latter [fol. 209] decision. However, on the procedure to expedite the appeal sought by this motion, appellants would drop grounds (c) and (d) and confine their appeal to grounds (a) and (b). The expedited appeal would thus be limited

to urging this Court to overrule its prior decision and would not urge reversal on grounds not comprehended by and considered in the prior decision. In short, appellants on this procedure withdraw grounds (c) and (d), and urge only grounds (a) and (b).

Appellants will request respondent to agree to submit the appeal on briefs without oral argument.

3. In lieu of an expedited appeal confined to urging the overruling of the prior decision, there is the alternative of summary affirmance of the judgment on the authority of the prior decision. Unless this Court were disposed to reconsider the merits of its prior decision, briefs urging adherence to it or reversal of it would appear to be pointless, and forthright judicial administration would be served by prompt affirmance of the judgment in reliance upon the prior controlling decision. Appellants entertain no doubt that affirmance of the judgment in this fashion would be no impediment to review by the Supreme Court of the United States. Summary affirmance on the authority of a prior decision was the course followed in *Peters v. Hobby*, 349 U.S. 331, and the judgment thus summarily affirmed was thereafter reviewed by the Supreme Court of the United States on the merits. The brief of the Attorney General of the United States on behalf of the respondent in *Peters v. Hobby* described the procedure followed (Br. for Res., *Peters v. Hobby*, 349 U.S. 331, October Term, 1954, No. 376, p. 20):

On appeal, the cause was presented to the court below on petitioner's motion to enter judgment on the merits without formal briefs or argument. The parties agreed that this action presented the same issues decided by that court in *Bailey v. Richardson*, 182 F.2d 46, affirmed by an equally divided court, 341 U.S. 918. Feeling "obliged to follow the ruling in that case in the determination of the present case," the court below granted petitioner's motion for the entry of judgment without formal briefs or argument and affirmed the judgment entered for respondents by the district court (R. 28).

[fol. 210] 4. The present appeal is of course not moot. The decree is presently outstanding and in operative effect,

and will certainly remain so as long as the Governor retains possession of the property of Kansas City Transit, Inc., pursuant to the King-Thompson Act. Expedition is essential, however, in order to safeguard against the possibility of mootness. This Court's prior decision validating the King-Thompson Act was not considered on the merits by the Supreme Court of the United States because of mootness. 361 U.S. 363. The validity of the King-Thompson Act can be finally and authoritatively determined only by the Supreme Court of the United States, and it would serve the welfare of all to facilitate and obtain dispositive determination of the question.

5. This appeal is to be determined by this Court en banc in accordance with Article 5, Section 9, of the Missouri Constitution in that "a federal question is involved. . . ." 2 V.A.M.S., Art. 5, Sec. 9, p. 212 (1945).

Wherefore, the motion should be granted either (1) summarily affirming the judgment on the authority of this Court's prior decision in *Missouri v. Local No. 8-6, Oil, Chemical & Atomic Workers Union*, 317 S.W.2d 309, vacated as moot, 361 U.S. 363, or (2) expediting the appeal by submitting it on briefs without oral argument, briefs to be simultaneously served within thirty days from the date of the order granting the motion to expedite the appeal.

Respectfully submitted,

John Manning, 3333 Warwick Boulevard, Kansas City, Missouri; Bernard Cushman, 5025 Wisconsin Avenue, N.W., Washington, D.C.; Bernard Dunau, 912 Dupont Circle Building, N.W., Washington 6, D.C., Attorneys for Appellants.

March 1962

[fol. 212]

[File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

EX BANC

[Title omitted]

SUGGESTIONS OF RESPONDENT, STATE OF MISSOURI, WITH REFERENCE TO APPELLANTS' ALTERNATIVE MOTION—Filed March 20, 1962

Respondent, State of Missouri, herewith submits to the Court its suggestions in connection with appellants' Alternative Motion (1) to Summarily Affirm the Judgment, or (2) to Expedite the Appeal, and in connection therewith respondent shows and states to the Court as follows:

1. With reference to appellants' Motion to Summarily Affirm the Judgment, the respondent objects to and opposes that motion. The case at bar is an appeal by the defendants from a permanent injunction issued by the trial chancellor. This Court has many times said that in suits in equity the case is before this Court for trial de novo and this Court has the duty to weigh the evidence and reach its own conclusions on the facts and to apply the facts it finds to the law. *Cleary v. Cleary*, Mo., 273 SW2d 340, 346; *Dreckshage v. Dreckshage*, 352 Mo. 78, 176 SW2d 7, 14; *Lastofka v. Lastofka*, 339 Mo. 770, 99 SW2d 46, 54; *Kizior v. City of [fol. 213] St. Joseph* Mo., 329 SW2d 605, 608; *Ragan v. Schreffler*, Mo., 306 SW2d 494, 496; and *Wagner v. Hicken*, Mo., 232 SW2d 531, 534.

We are unable to find authority either in the cases or in the Court's rules authorizing the Court to summarily affirm the judgment appealed from by the appellants. In the case at bar, the facts are completely different than those decided by the Court in *State of Missouri v. Local 8-6*, Mo., 317 SW2d 309. The issues tried in the trial court and the theory of presentation in the trial court are not identical with the theory now presented by appellants in their Motion to Affirm. This Court having the duty to review the trial

court should do so knowingly and with full understanding and knowledge of the facts and the applicable law.

The basis of appellant's Motion to Affirm the Judgment in this case is to secure a decision from this Court to provide a platform to apply for certiorari or appeal to the Supreme Court of the United States. This procedure compels this Court to pass upon the case as an abstract legal proposition without reference to the facts and the applicable law. This procedure denies this Court opportunity for considered judgment. This Court will give full consideration to appellants' meritorious arguments and contentions that would warrant any change in its view of the law. But to do this, the Court must consider those arguments and contentions. It would be manifestly unfair to seek to convict this Court of error without the Court having considered appellants' brief and arguments.

2. With reference to appellants' Motion to Expedite the Appeal, respondent has agreed with appellants to waive oral argument and submit the case to the Court on briefs [fol. 214] without oral argument in order to expedite the presentation and decision of this case. But, however, respondent objects to appellants' request that briefs be simultaneously served. Respondent is without definite knowledge as to exactly the manner and method which appellants will present their arguments and contentions, and thus to require the simultaneous filing of briefs by appellants and respondent would require respondent to set up arguments which it assumes the appellants will make and then proceed to direct its argument against those assumed appellants' arguments. This would not only be awkward but would tend toward confusion, lack of clarity, perhaps omission of arguments, and would surely not tend to aid in expediting consideration of this appeal. The regular and orderly course of procedure for filing briefs is indicated by Supreme Court Rule 83.06, which requires appellants' brief to be filed; then respondent's brief to be filed, and thereafter appellants' reply brief. While respondent is willing to cooperate in the expeditious submission of this matter within reason, yet respondent believes that undue haste and abnormal short-cut procedures would not

be in the public interest and would not insure reasonable and adequate protection of the public interest.

Respectfully submitted,

Thomas F. Eagleton, Attorney General; J. Gordon Siddens, Assistant Attorney General, Attorneys for Respondent.

Copy of the within and foregoing Suggestions of Respondent, State of Missouri, with Reference to Appellants' Alternative Motion mailed this 20 day of March, 1962, to John Manning, 3333 Warwick Boulevard, Kansas City, Missouri, Bernard Cushman, 5025 Wisconsin Avenue, NW, Washington, D.C., and Bernard Dunan, 912 Dupont Circle Building 6, NW, Washington 6, D.C., Attorneys for Appellants.

Gordon Siddens

[fol. 226]

IN THE SUPREME COURT OF MISSOURI.

[Title omitted]

ORDER ON ALTERNATIVE MOTIONS—April 9, 1962

Now at this day the court having seen and considered appellants' Alternative Motion (1) to summarily affirm the judgment or (2) to expedite the appeal by submitting the appeal without oral argument and suggestions filed by the Attorney General, doth order that said motion to affirm be, and the same is hereby denied, and the motion to submit appeal on briefs without oral argument is by the consent of counsel sustained. It is further considered and ordered by the court that the motions of Gage, Hodges, Moore, Park & Kreamer as counsel for The Gas Service Company, and Spencer, Fane, Britt and Browne, as counsel for Kansas City Power and Light Company, for leave to file briefs as amici curiae be, and the same is hereby sustained.

[fol. 244]

IN THE SUPREME COURT OF MISSOURI

EN BANC

SEPTEMBER SESSION, 1962

No. 49 377

STATE OF MISSOURI, Respondent,

vs.

DIVISION 1287 of the AMALGAMATED ASSOCIATION OF STREET,
ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF
AMERICA, et al., Appellants.

OPINION—Filed October 8, 1962

On Appeal from the Circuit Court of Jackson County
Honorable J. Donald Murphy, Judge

Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, an unincorporated, voluntary association of persons with headquarters at 1913 Tracy Avenue in the City of Kansas City, Missouri, defendants in the above entitled cause in the Circuit Court of Jackson County, Missouri, have appealed from a decree and permanent injunction entered in said cause on February 12, 1962, in favor of the State of Missouri. The judgment in said cause concluded, as follows: "Now, Therefore, It Is Ordered, Adjudged and Decreed that the defendants, and all of the persons to whom notice of this order of injunction may come, be and they are hereby permanently enjoined and restrained from continuing, inciting, supporting and participating in the work stoppage, refusal to work and strike *against the State of Missouri.*" (Italics ours.) See Section 295.200, subsections (1) and (6) RSMo 1959. Appellants seek to reverse the judgment and obtain a declaration that the King-Thompson Act, Chapter 295 RSMo 1959, under which the action was instituted, is unconstitutional and void in its entirety under the

Federal Constitution, although only portions of the mentioned Act are before the Court for construction on this appeal.

[fol. 245] The cause was in equity and it was tried by the court without the aid of a jury. Under Supreme Court Rule 73.01(b), applicable in such cases, it is provided that "all fact issues upon which no specific findings are made shall be deemed found in accordance with the result reached."

The case presents the issue as to whether the police power of the State may be exercised in an emergency and pursuant to state statutes to take over and maintain the operation of the public transportation system of a great city when the public interest, health and welfare of the State is jeopardized as the result of the sudden interruption and discontinuance of such service by reason of a strike by the employees of the transportation company against their employer. Appellants concede this is the issue in that they say: "Appellants basic position is that, *irrespective of the existence or non-existence of jeopardy by state standards*, the state procedure itself is beyond the power of the State to impose, and appellants' fundamental objective is to be free from its applicability at all. * * * In this posture, where the question goes to the validity of fastening the state procedure onto the litigant at all, existence of the power to act must first be decided." (Italics ours.)

The transportation company is not a party to this action. This suit was instituted by the State of Missouri against the defendants after the State had taken possession and control of the transportation facilities of the transportation company. The basis of the proceeding is that the employees of the Company by a concerted refusal to work for and under the supervision of the State, after the Company's equipment and transportation facilities had been taken over by the State, have violated the law of the State. The State obtained a temporary restraining order, which was subsequently followed, after hearing, submission and argument, by a permanent injunction, and from this judgment the defendants, as stated, have appealed.

The petition was filed on November 15, 1961, pursuant to the provisions of certain state statutes referred to as

[fol. 246] the King-Thompson Act, Chapter 295 RSMo 1959. This Act is entitled "An Act to provide for the mediation of labor disputes in public utilities; to create a board of mediation and to provide for the qualifications, powers, duties, compensation of the members of such board; to provide for the seizure and operation of public utilities by the state in order to insure continuous operation, to provide for the enforcement of this act and to prescribe penalties for any violation of this act." The mentioned Act has been before this Court for consideration on several previous occasions. See *State ex rel. State Board of Mediation v. Pigg*, 362 Mo. 798, 244 S.W.2d 75; *State v. Local No. 8-6, Oil, Chemical & Atomic Workers International Union, AFL-CIO*, Mo. Sup., 317 S.W.2d 309, vacated by the United States Supreme Court on the ground that the controversy had become moot (80 S.Ct. 391, 361 U.S. 363); *Rider v. Julian*, 365 Mo. 313, 282 S.W.2d 484. In this connection also see 29 U.S.C.A., Chapter 7, Sec. 152(2) defining the term "employer" under the Federal Act *as not applying to a state*. Of course, there is no question that the Federal labor legislation, 29 U.S.C.A., Sec. 141, et seq., in question here, encompassing as it does all industries and utilities "affecting commerce," applies to a privately owned public utility whose business and activities are carried on wholly within a single state, as well as it does to those that operate interstate. *Consolidated Edison Company v. National Labor Relations Board*, 305 U.S. 197.

The essential provisions of the King-Thompson Act, here in controversy, are Secs. 295.010, 295.180 and 295.200(1) and (6) RSMo 1959. These sections are, in part, as follows: Section 295.010 "Labor relations affecting public utilities—state policy. It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are *life essentials of the people*; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest; • • • ." (Italics ours.) A similar declaration of the public policy of this State is announced [fol. 247] in the Public Service Commission Act by Sections

386.310, 386.570 and 386.580 RSMo 1959. Also see *State v. Local No. 8-6*, etc., *supra*, 317 S.W.2d 309, 316 (7, 8).

Section 295.180 RSMo 1959, in part, provides that "Should either the utility or its employees refuse to accept and abide by the recommendations made pursuant to the provisions of this chapter * * * or in the event that neither side has given notice to the other of an intention to seek a change in working conditions, and there occurs a lockout, strike or work stoppage which, in the opinion of the governor, *threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare*, then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the state of Missouri in the public interest." (Italics ours.) (As we shall subsequently see, the Governor of the State acted under this provision of the statutes and took possession of that portion of the plant, equipment and transportation facilities of the Kansas City Transit, Inc., located exclusively in the State of Missouri.)

Section 295.200(1) RSMo 1959 provides: "It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for * * * the state *after any plant, equipment or facility has been taken over by the state under this chapter*, as means of enforcing any demands against the utility or against the state." (Italics ours.) This particular statute must be read and construed together with Section 295.210 of the same chapter, as follows: "No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent."

Section 295.200(6) RSMo 1959 further provides: "The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the [fol. 248] governor hereunder."

As stated, the cause being in equity and having been tried before the court without the aid of a jury, we review the cause de novo and pursuant to Supreme Court Rule 73.01 (d) providing, in part, that "The appellate court shall review the case upon both the law and the evidence as in suits of an equitable nature. The judgment shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Briefly, some of the facts shown by the record are that the Kansas City Transit, Inc., (hereinafter referred to as the Company) operates a transportation system for passengers by bus in the States of Kansas and Missouri. It operates under a Certificate of Convenience and Necessity issued by the Public Service Commission of Missouri and a like certificate issued by the Kansas State Corporation. The Company's annual revenue received from bus transportation is approximately \$8,600,000. Of this sum 77 per cent is derived from transporting passengers wholly within the State of Missouri, 7 per cent from transporting passengers wholly within the State of Kansas and 15 per cent for transporting passengers between Missouri and Kansas. On a normal work day the number of passengers carried by the Company on the total system is approximately 150,000 persons. Of this number 115,000 travel exclusively in Missouri, 10,500 exclusively in Kansas and 24,500 travel interstate between points in Kansas and Missouri. The Company owns 401 busses and operates 234 on routes exclusively within the State of Missouri. The Company employs 950 persons and 817 are within the bargaining unit represented by the defendant Union. Of the employees within the bargaining unit 640 are bus drivers and 170 are maintenance employees; 665 live in Missouri. The Company annually spends about \$1,450,000 for fuels, materials and supplies. All of 401 busses owned by the Company were manufactured in states other than Kansas or Missouri and delivered to the Company in Missouri from other states. Prior to the difficulties in question here, the National Labor Relations Board had found that the Kansas City Transit, Inc. is engaged in commerce within the meaning of the [fol. 249] National Labor Relations Act. Kansas City Pub-

lie Service Co., 47 NLRB 1, 2. The NLRB has certified the Union as the representative of the employees within its bargaining unit and the most recent labor agreement was approved for a term from November 1, 1959 through October 31, 1960.

On August 15, 1961, the Company notified the Union of its desire to terminate the then existing agreement. On August 30, 1961, the Union notified the Company of its desire to negotiate changes in the agreement and identified the changes it proposed. The evidence shows the basic issues in dispute between the Union and the Company to be substantially as follows: "Wages, of course, were in dispute; vacations with pay; group insurance; pensions; disability allowances; sick leave; a different system of work day for all maintenance employees; a profit sharing plan; a cost of living plan; * * * runs, for example, in transportation; minimum guarantees; extra man's guarantee; bonus for drivers who would go a full year without an avoidable accident." The Union sent copies of its desired changes to the Federal Mediation and Conciliation Service and to the Missouri State Board of Mediation.

As indicated, the sixty-days' notice of proposed changes was sent to the Company and the thirty-day notice of dispute was sent to the Federal and State agencies. See 29 U.S.C.A. 158(d)(1) and (3); "Sec. 8(d)(1) and (3) of the Labor Management Relations Act, 1947." On October 19, 1961, the Federal Mediation and Conciliation Service began an attempt to mediate the dispute, and negotiations, since then, have been conducted with its assistance. However, the Union refused to accept the mediation services of the Missouri State Board of Mediation upon that Board's refusal to confine its services strictly to mediation efforts and not to submit recommendations for settlement, nor to publicize its meetings, or permit the attendance of third persons at any meetings. Ultimately, the negotiations between the Company and the Union reached an impasse and the Company refused to arbitrate the unsettled issues. A secret strike vote was taken, with 681 members favoring a strike, and a strike against the Company became effective [fol. 250] at midnight on November 13, 1961. Picket lines

were immediately established and continued until the evening of November 15, 1961.

Prior to the strike the Federal Mediation and Conciliation Service had cooperated fully with the State agencies having similar duties, including the Missouri State Board of Mediation. When it appeared that a strike was imminent, effective at midnight on November 13, 1961, the Governor of the State of Missouri issued a Proclamation to the effect that the contemplated strike threatened to interrupt the mass transportation operations in *Missouri* of the Kansas City Transit, Inc.; that after investigation, it was his opinion the public interest, health and welfare were jeopardized as the result of the impending interruption of the public transportation system in the *City of Kansas City, Missouri*, and it was necessary that he exercise the authority vested in him by Chapter 295, and particularly Section 295.180 RSMo 1959, to insure the operation in *Missouri* of the facilities of the Kansas City Transit, Inc., a public utility. On the same day the Governor of the State of Missouri issued his Executive Order in words and figures as follows:

"TO THE SECRETARY OF STATE:

"WHEREAS, there is a labor dispute existing between the Kansas City Transit, Inc., a public utility furnishing public passenger transportation service in the State of Missouri, and Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, recognized bargaining agent of certain of the employees of the Kansas City Transit, Inc.; and WHEREAS, as a result of such labor dispute there is a threatened strike on the part of the employees in *Missouri* of the Kansas City Transit, Inc., who are members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, which threatens the effective operation in *Missouri* of the Kansas City Transit, Inc., a public utility; and WHEREAS, in my opinion such threatened strike threatens to interrupt the operation in *Missouri* of the Kansas City Transit, Inc.; and WHEREAS, in my opinion the public interest, health and welfare are jeopardized; and WHEREAS, after investigation, I, JOHN M. [fol. 251] DALTON, Governor of Missouri, by Executive

Proclamation dated the 13th day of November, 1961, proclaimed:

"(1) That the continued operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a labor dispute.

"(2) That interruption of the operation of the Kansas City Transit, Inc., a public utility, is threatened as the result of a threatened strike on the part of employees of the Kansas City Transit, Inc., who are members of Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.

"(3) That the public interest, health and welfare are jeopardized as the result of the threatened interruption of the operation of such public utility.

"(4) That the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1959, is necessary to insure the operation in Missouri of the Kansas City Transit, Inc., a public utility.

"NOW, THEREFORE, I, JOHN M. DALTON, Governor of the State of Missouri, by virtue of the authority vested in me by Chapter 295, and particularly Section 295.180, of the Revised Statutes of Missouri, 1959, do hereby order as follows:

"I hereby take possession of the plants, equipment, and all facilities of the Kansas City Transit, Inc., *located in the State of Missouri, for the use and operation by the State of Missouri in the public interest*, effective at 11:59 o'clock P.M., Central Standard Time, Monday, November 13, 1961.

JOHN M. DALTON
Governor."

(All italics ours.)

The order was duly served on the Kansas City Transit, Inc., as stated, and a further order, effective November 13, 1961, at 11:59 p.m., was promulgated, in part, as follows, to wit:

"(1) That Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as my agent, is hereby authorized and directed to take possession of the plants, equipment and all facilities of the Kansas City Transit, [fol. 252] Inc., in the State of Missouri or such parts of each of said plants, equipment and facilities as may be necessary for the purpose of carrying out the provisions of this Order, and to effect my Proclamation and Executive Order No. 1 declaring the public interest, health and welfare jeopardized, in order to insure that the said utility above mentioned is effectively operated in the interest of the people of this State to the end that they may have the benefit of necessary and essential public utility services.

"(2) Said Daniel C. Rogers shall exercise the aforesaid authority as my agent forthwith, and he shall continue to exercise the aforesaid authority as my agent until and unless otherwise directed by me.

"(3) All rules and regulations of the aforesaid utility governing the internal management and organization of the company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri.

"(4) This Order shall take effect at 11:59 P.M., Central Standard Time, November 13, 1961.

"Done this 13th day of November, 1961.

JOHN M. DALTON
Governor"

The record shows this was the third time that the plant, property and transportation facilities of the mentioned Company had been seized by the State of Missouri on account of a work stoppage by reason of a threatened strike by the employees against the Company. The dates of the previous seizures and the previous periods of operation by the State being, as follows: Seized April 29, 1950 and operated until December 11, 1950; seized November 6, 1957 and operated until March 6, 1958. Appendix A and Appendix B attached to respondent's brief show a record of other seizures and the operations under the Act in Missouri.

As stated, the strike was to begin at midnight on November 13, 1961, and the Union struck the Company at that time. The contract had expired October 31, 1961. The seizure was declared effective as of one minute before the strike was to become effective (11:59 p.m.). Thus the strike had been [fol. 253] *called* against the *Company* before seizure. Thereafter, the officers and members of defendant Union refused to operate the transportation facilities of the Company after its physical properties, plant and operating facilities were taken possession of and placed in the control of the State of Missouri. The strike previously called went into effect *after* seizure by the State and a concerted refusal to work for the State was *supported* and *participated in* by the defendants-appellants. As a result, no mass transportation was provided in the city and the present suit was instituted by the State on November 15, 1961, praying an injunction against the Union, its officers and members from continuing, inciting, supporting and participating in the work stoppage and refusal to work for and under the supervision of the State of Missouri in the operation of the mass transportation facilities of the Company. See Sections 295.200(1) and (6) and 295.210.

The petition charged that "such action on the part of the union and officers in calling, inciting, supporting and participating in said strike and concerted refusal to work for the State of Missouri" was unlawful under Chapter 295 RSMo 1959, and especially Section 295.200(1) thereof. We find it unnecessary to further review the detailed allegations and prayers of the State's petition for an injunction against the defendants, or to detail the provisions of the temporary restraining order and order to show cause, as entered on said date, nor do we find it necessary to review in detail the provisions of defendants' motion to dismiss the petition, or the detailed provisions of the subsequent answer filed by the defendants on December 7, 1961.

Defendants' motion to dismiss plaintiff's petition, as filed November 27, 1961, in part, stated: "The defendants state that Chapter 295, Revised Statutes of Missouri, 1949, and especially Sections 295.180 and 295.200 of said Chapter 295 are unconstitutional and invalid and all actions taken there-

under by the Governor of Missouri and Daniel C. Rogers are unlawful, invalid and without any force or effect for the reasons herein set forth and are in derogation of the rights, privileges and immunities granted to all members of the [fol. 254] defendant Amalgamated and guaranteed by the Constitution of the United States in Article I Section 8 and Article VI of said Constitution, and the Thirteenth and Fourteenth Amendments of the Constitution of the United States." The motion to dismiss was incorporated in the answer by reference. With reference to defendants' answer, it is sufficient to say that appellants' brief summarizes the grounds upon which the defendants defended the State's said action in the circuit court, as follows, to wit: "(a) The King-Thompson Act is in conflict with and preempted by the Labor Management Relations Act, 1947. (b) The King-Thompson Act abridges federal rights conferred by the First, Thirteenth and Fourteenth Amendments of the United States Constitution. (c) As applied in this case, the King-Thompson Act (i) operates extraterritorially, and therefore conflicts with the constitutional requirement that a State confine its authority within its own borders; and (ii) directly regulates interstate commerce, and therefore offends the Commerce Clause of the United States Constitution independently of implementing legislation by Congress. [And] (d) The actual or threatened strike against the Company did not jeopardize the 'public interest, health and welfare' within the meaning of the King-Thompson Act."

In reference to point (d), *supra*, plaintiff's petition alleged "That upon taking possession of the plants, equipment and facilities of the Company by John M. Dalton, Governor of the State of Missouri, the employees and defendants herein have continued the labor dispute aforesaid, and on November 14, 1961, said employees and defendants herein failed and refused, and still fail and refuse, to perform work or labor for and *on behalf of the State of Missouri* in the furnishing of the transportation services aforesaid through the plants, equipment and facilities of The Company to the patrons of said company and to the people generally in the state of Missouri; that thus and thereby has been caused an actual interruption of the

operation of the transportation services, as aforesaid, of the public utility, Kansas City Transit, Inc.; that the interruption of the furnishing of such transportation services through the plants, equipment and facilities of The Com-[fol. 255] pany and the refusal of the employees to perform work and labor for and on behalf of the State of Missouri in the furnishing of such transportation service has jeopardized and threatened the public interest, health and welfare of the state of Missouri and of the inhabitants thereof." (Italics ours.) The defendants' answer to plaintiff's petition contained, among others, the following allegations: "It is specifically denied that any threatened or actual strike jeopardizes and/or threatens or jeopardized and/or threatened the public interest, health and welfare of the state of Missouri and of the inhabitants thereof. * * * Answering the allegations of paragraph 14, defendants aver that the employees have struck, and desire to strike, in furtherance of their collective bargaining demands made upon Kansas City Transit, Inc., and that defendants support and participate in such strike action. *Defendants deny that any such strike action is a strike against or a refusal to work for the state of Missouri.*" (Italics ours.)

In their brief filed in this Court appellants have further explained that "Grounds (a) and (b) have been heretofore decided adversely to appellants' position by this Court in *Missouri v. Local No. 8-6, Oil, Chemical & Atomic Workers Union*, 317 S.W.2d 309, vacated as moot, 361 U.S. 363. Grounds (c) and (d) are undetermined by and open under the latter decision. However, on the procedure to expedite the appeal sought by this motion, appellants would drop grounds (c) and (d) and confine their appeal to grounds (a) and (b). The expedited appeal would thus be limited to urging this Court to overrule its prior decision and would not urge reversal on grounds not comprehended by and considered in the prior decision. *In short, appellants on this procedure withdraw grounds (c) and (d) and urge only grounds (a) and (b).*" (Italics ours.) Appellants further point out that, after the appeal from the decree in this case had been taken, appellants alternatively moved this Court "either (1) to summarily affirm the judgment on the authority of this Court's decision in *Missouri v. Local*

No. 8-6, Oil, Chemical & Atomic Workers Union, 317 S.W.2d 309, vacated as moot, 361 U.S. 363, or (2) to expedite the appeal by submitting it on briefs without oral argument, [fol. 256] briefs to be simultaneously served within thirty days from the date of the order granting the motion to expedite the appeal." In pursuance to said request this Court, on April 9, 1962, entered its order refusing to summarily affirm the judgment of February 12, 1962, but granted leave "to submit appeal on briefs without oral argument," which was done.

While this Court refused to summarily affirm the judgment of the trial court in this case on the written request of appellants on the authority of this Court's decision in *State of Missouri v. Local No. 8-6, etc.*, supra, 317 S.W.2d 309, vacated as moot by the United States Supreme Court in 80 S.Ct. 394, 361 U.S. 363, it does not necessarily follow that the opinion of this Court in that case, as reported in 317 S.W.2d 309, does not still represent the views of the members of this Court under the particular facts presented by the record in that case; however, the Supreme Court of the United States refused to review the validity of the injunction judgment entered in that case on the ground that *the injunction had expired by its own terms* and because of the uniform policy of that Court not to review a judgment, which if reversed, the court's action would be ineffectual for want of a subject matter on which it could operate. Although the judgment was vacated, as moot, it does not appear from the opinion vacating the judgment that the Supreme Court of the United States intended thereby to overrule the common law of this State, as evidenced by the cases cited at 317 S.W.2d 309, 314(2, 3) of this Court's opinion, or to substitute therefor any Federal common law contrary to that Court's holding in *Erie R.R. v. Tompkins*, 58 S.Ct. 817. Further, each case must be decided upon its own peculiar facts and upon the particular issues of law presented for decision, hence the opinion of this Court in *State v. Local No. 8-6, etc.*, supra, is not necessarily controlling or decisive under the facts of the case at bar, and this Court properly refused to summarily affirm the present judgment on the basis of this

Court's prior judgment in another case, which had been vacated by the United States Supreme Court as moot.

In a motion filed by the appellants in this Court on May 9, 1962, appellants further state: "Independently of the [fol. 257] basis upon which the motion to expedite the appeal was made and granted, appellants on any procedure simply do not choose to present the jeopardy question. While appellants took issue with the reasonableness of the Governor's opinion before the Circuit Court, *that court decided the question adversely to appellants*. Appellants do not wish to pursue that point on appeal. *They acquiesce in respondent's position that the requisite jeopardy existed within the meaning of the King-Thompson Act.*" (Italics ours.) In a letter filed on June 5, 1962, in lieu of a reply brief, appellants (with reference to their counsel) state that "~~he could not more forcefully express than he did appellants' acquiescence in the existence of jeopardy within the meaning of the King-Thompson Act.~~" (Italics ours.)

Appellants take this position regardless of the fact that this court has construed the King-Thompson Act as follows: "The King-Thompson Act is strictly emergency legislation and is not a comprehensive code for the settlement of labor disputes in utilities * * *. Emergency legislation is justified under the police powers. 16 C.J.S., Constitutional Law § 198, pp. 972-973. The purpose of seizure is the preservation of community life as encouraged and fostered by the state. The purpose of the Act is to protect its citizens against disaster." State v. Local No. 8-6, etc., supra, 317 S.W.2d 309, 321.

Appellants in their statement of facts have substantially ignored the issue of jeopardy by the selection and statement of certain favorable evidence appearing in the record and ignoring much of the unfavorable evidence with reference to conditions existing during the two days in which the defendants, by concerted action, refused to work and operate the mass transportation system under the supervision and control of the State. In any event, what did happen during those two days is not necessarily decisive of the issues presented by plaintiff's action. Section 295.180 RSMo 1959 authorizes the Governor to act, when a lockout, strike or work stoppage occurs " * * * which, in the opinion

of the governor, threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare, * * * and in that case he is authorized to take [fol. 258] immediate possession of the plant, equipment or facility for the use and operation by the state of Missouri in the "public interest." The statute is not limited to what *has* happened, but includes what *may reasonably be expected to happen*. It has been suggested that the trial court might well have taken judicial notice of what could and would happen to the inhabitants of a metropolitan area consisting of some one million, one-hundred thousand persons upon the *sudden and total* discontinuance of 90 per cent of the public mass transportation service of the city leaving more than 115,000 daily Missouri users of such services without any adequate substitute for such transportation services. Courts may not assume ignorance of what everybody knows (Elder v. Delcour, 364 Mo. 835, 269 S.W.2d 17, 19; City of St. Louis v. Pope, 344 Mo. 479, 126 S.W.2d 1201, 1210); nevertheless, the record in this case fully supports the finding of the trial court on the issue mentioned. A court could well find from the record in this case that the further continuance of the concerted work stoppage by the defendants under the circumstances shown and the continued failure of the defendants to operate the mass transportation system of the city with the facilities and equipment of the transportation company, which had been taken over by the State and were under the supervision and control of the State, might well have resulted in extreme danger to the health, welfare and safety of the inhabitants of Kansas City, Missouri, and in unrest, general confusion, disorganization, excitement, tension, inability to reach places of work in the retail district of the city, reduction of employment and loss of wages by innocent victims of the strike, congestion of traffic, disruption of business, reduction and impairment of law-enforcement agencies and the creation of havoc, disaster and general chaos in the community. However, we need not further discuss *the issue of jeopardy to the community* within the meaning of the King-Thompson Act as construed by this Court, or the evidence upon which the trial court's finding was based, because that issue

is now conceded by the appellants, as hereinbefore and hereinafter stated.

With reference to the *State's operation* of the transportation system, the defendants' evidence tended to show that [fol. 259] the employees of the Company are not, and will not become, employees of the State of Missouri; that the employees are not paid by the State; that the State does not contribute to their social security or unemployment compensation benefits; that it does not pay their workmen's compensation claims, since these payments are made by the Company; and that the State does not direct the employees as to what to do or where to report for work, nor does it hire, discharge or discipline them or control any aspect of the employment relationship between them and the Company or consult with the Company concerning it.

Defendants also offered evidence tending to show that the State does not and is not authorized to expend any of the Company's money; that the State does not possess the Company's bank account; that the State officers do not sign its checks or collect its revenue or make reports to the State; that no financial reports have been requested concerning the Company's receipt of its funds and the State does not make purchases of supplies for the Company nor pay its bills. Defendants also offered testimony that no property of the company was actually conveyed, transferred or otherwise turned over to the State of Missouri, except as is evidenced by the Governor's Proclamations and Orders which were served on the Company and that a State agent was designated to act under said orders. There was also evidence that the State does not participate in the management of the Company, except as stated, and that the State is not consulted by the Company's board of directors or officers as to the conduct of the Company's business. The management of the Company remains exclusively in its board of directors and there has been no change of any kind in the conduct of its business by the Company, since the Company was served with the Governor's orders and the subsequent Proclamations, including the designation of the State's agent and the orders that said agent "shall exercise the aforesaid authority as my

agent forthwith, and he shall continue to exercise the aforesaid authority as my agent until and unless otherwise directed by me." The Governor's order also directed that "All rules and regulations of the aforesaid utility governing the internal management and organization of [fol. 260] the company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri." In this connection we must say that defendants' answer admits that on the 13th day of November, 1961, said John M. Dalton, Governor of Missouri, under and by virtue of the authority vested in him by the Constitution of Missouri and statutes thereof, including Section 295.180 RSMo 1959, did take immediate possession of the plant, equipment and facilities of the said Kansas City Transit, Inc., "except that defendants aver that the taking of possession was to insure continuance of operations in the State of Kansas in addition to the State of Missouri." Defendants also offered in evidence the several Executive Orders and Proclamations of the Governor, including the one appointing Daniel C. Rogers as the Governor's agent, as hereinbefore stated, and containing the related orders with reference thereto.

Assuming that the trial judge accepted and believed the testimony of the defendants' witnesses with reference to the State's operation of the utility, yet the trial court may further have believed and found that there was no other possible or reasonable manner by which the State could operate the transportation system in Kansas City and protect its citizens, and particularly those citizens who were not interested in or participating in the strike of the defendants against their employer; and that the transportation system was being operated by the State, with the utility as its agent, in order to make use of the internal organization and well-established regulations of the utility company. See *Rider v. Julian*, supra, 282 S.W.2d 484, 494.

Before reviewing the issues presented on appeal, we must consider appellants' further statement that, although they defended this cause in the Circuit Court of Jackson County upon the ground that, "(c) As applied in this case, the King-Thompson Act (i) operates extraterritorially, and therefore conflicts with the constitutional requirement

that a state confine its authority within its own borders; and (ii) directly regulates interstate commerce, and therefore offends the Commerce Clause of the United States [fol. 261] Constitution independently of implementing legislation by Congress", nevertheless the appellants on this appeal *now desire to withdraw and do withdraw from the Court's consideration said ground (c)*, one of the grounds upon which the cause was submitted in the circuit court and which issue was found against the defendants. In a motion to strike certain matters filed in this Court on May 9, 1962, appellants further stated their position, as follows: "Appellants are unaware of any procedure by which a party can be required against his will to put in issue on appeal a matter he chooses not to contest."

We recognize that appellate courts customarily review cases on appeal on the basis of the issues presented by the appellants. In this case, as stated, the issues in dispute are solely between the State of Missouri and certain employees, who are on strike against the Company, and who, by concerted action, refused to operate the transportation facilities of the Company, after such facilities were in the legal possession of and under the supervision and control of the State.

As stated, the Company is not a party to this action. The pleadings and issues presented in the trial court do not present a labor dispute for decision between the Union and the Company. The trial court did not attempt to assume jurisdiction of a labor controversy or dispute, nor to decide any labor issues between employer and employees. The Governor of the State did not attempt to take possession or control of any physical property or transportation facilities outside of the State of Missouri. No state statute involved in this proceeding purports to require or attempts to carry on an interstate operation. The decree appealed from only enjoins defendants from supporting and participating in the concerted work stoppage and strike against the State of Missouri.

Further, the record shows that there has been no attempt, either by Executive Order, pleadings, judgment or acts in the instant case, to extend the jurisdiction of the State of Missouri into the State of Kansas. "A state may validly

regulate activities, persons, and property within its jurisdiction, although extraterritorial repercussions ensue, pro- [fol. 262] vided such regulation is vital to the welfare of its inhabitants, as the propriety of regulation is determined by its focus on internal problems, not by the range of its influence." 81 C.J.S., p. 861; Sec. 3; *Pacific Coast Dairy v. Department of Agriculture of California*, 318 U.S. 285, 295. The State did not take possession or control of the Company's property, or of any of its facilities *in any state other than the State of Missouri*. The decree conforms to the record and appellants may properly abandon any objection to the trial court's ruling on any defense submitted by them and overruled by the court, such as the defense set out in subdivision (c), *supra*.

Before considering appellants' brief as filed in this Court, we call attention to Supreme Court Rule 83.05, which expressly provides that "The brief for appellant shall contain: (1) * * * (the grounds on which jurisdiction is invoked); (2) A fair and concise statement of the facts without argument; (3) The points relied on, *which shall show what actions or rulings of the Court are sought to be reviewed and wherein and why they are claimed to be erroneous*, with citation of authorities thereunder * * * (e). Points Relied On. The points relied on *shall briefly and concisely state what actions or rulings of the Court are claimed to be erroneous and briefly and concisely state why it is contended the Court was wrong in any action or ruling sought to be reviewed. Setting out only abstract statements of law without showing how they are related to any action or ruling of the Court is not a compliance with this rule.*" (Italics ours.)

Appellants' statement of facts in their brief violates this rule in that it is argumentative, emphasizes the facts favorable to appellants and omits many facts unfavorable to appellants. Further, appellants not only argued the facts in the statement of facts, but also argued issues of law. An opinion of this Court is cited and quoted from at some length in appellants' statement of facts. The brief is also subject to further criticism in that, under "Points and Authorities," appellants do not mention or refer to the judgment appealed from, nor do appellants briefly or

concisely state what actions or rulings of the trial court [fol. 263] are claimed to be erroneous or why any particular designated action of the trial court was wrong.

The four points relied on for reversal are stated in the brief as follows: "I. The King-Thompson Act is in conflict with and preempted by the Labor Management Relations Act, 1947 * * * II. Prohibition of a public utility strike, without substituting a compensating equivalent for it, offends substantive due process. * * * III. Prohibition of a public utility strike, without substituting a compensating equivalent for it, results in involuntary servitude. * * * IV. To forbid a person to 'incite' or 'support' a strike or refusal to work is unconstitutional for the dual and interlocking reasons that it abridges free speech and has the vice of vagueness." Many of the subheadings under the respective main headings are abstract statements of law. Except for the fact this case involves matters of great public importance, we should not hesitate to dismiss this appeal for the failure of appellants to comply with the rules of this Court governing the preparation and contents of appellants' briefs.

Appellants in their statement of facts say that their "brief is confined to showing that the King-Thompson Act is invalid upon the ground that (1) it is in conflict with and preempted by the Labor Management Relations Act, 1947, and that (2) it abridges federal rights conferred by the First, Thirteenth and Fourteenth Amendments of the United States Constitution"; however, under "Points Relied On" appellants have designated only the *four points* hereinbefore referred to. At no place in appellants' brief do they claim they had the right to strike against the State and in their answer denied that they did so, yet *essentially that is what the judgment appealed from expressly enjoined*. Further, under "Points Relied On" there is no assignment that the trial court erred in entering the particular judgment and decree that the court did enter in this case.

After the petition for an injunction was filed, the appellants filed a motion to dismiss the petition and then offered evidence in support of it. See Supreme Court Rules 55.29, 55.31, 55.33. The motion to dismiss was in effect overruled, [fol. 264] the temporary injunction was continued in effect,

defendants' answer was then filed, evidence was heard and the judgment appealed from was entered. No motion for a new trial was filed, heard or ruled because not required by Supreme Court Rule 79.03. The appeal was, therefore, taken from the judgment on the merits and there is no assignment under Points and Authorities that the court erred in overruling appellants' motion to dismiss the petition, an assignment that would have presented an issue of law.

As stated, the first point relied on by appellants is that "The King-Thompson Act is in conflict with and preempted by the Labor Management Relations Act, 1947." This assignment is *not* directed to what the trial court decided, but seeks an *advisory opinion* as to the validity of all of the provisions of a state act, including many matters not in issue in any manner in this case, nor decided by the trial court. *Atchison v. Retirement Board of Police Retirement System of Kansas City, Mo. Sup.*, 343 S.W.2d 25, 35; *State of Missouri ex rel. Jenkins v. Bradley, Mo. Sup.*, 358 S.W.2d 38, 39. Judicial review will not be accorded questions which are not directly and necessarily involved in the particular legal situation presented on appeal. *Juengel v. City of Glendale, Mo. Sup.*, 161 S.W.2d 408, 409(2); *Kansas City, Mo., v. Williams*, 8 Cir. 205 F.2d 47, 51(3), certiorari denied 346 U.S. 826. Further, Supreme Court Rule 83.13(a) governing appeals expressly provides that "no allegations of error shall be considered in any civil appeal except such as have been presented to or expressly decided by the trial court." It will be noted that Point I is an attack upon the King-Thompson Act in its entirety. In effect, the point may be referred to as a "shot-gun approach" intended to abolish the Act "lock, stock and barrel," regardless of what issues were presented to and ruled by the trial court.

In making this assignment the appellants, of course, ignore the holding of this Court in *State ex rel. State Board of Mediation v. Pigg*, supra, 244 S.W.2d 75, in which this Court held that certain provisions of the Act were *severable*, particularly those sections directly affecting the State Board of Mediation, its legal existence, powers and duties. 244 S.W.2d 75, 79(7). The first eight sections of the

[fol. 265] King-Thompson Act, Secs. 295.010-295.080 RSMo 1959, V.A.M.S., declaring state policy, defining terms, creating the Board and defining its duties; powers and mediation services, were also held *not* to be in conflict with the Labor Management Relations Act, 1947, particularly in view of Secs. 202(c) and 203(b), 29 U.S.C.A. Secs. 172(c) and 173(b), which contemplate the existence of state boards and cooperation with them. 244 S.W.2d 80(8, 9). This ruling in the Pigg case was approved by this Court in *State v. Local No. 8-6, etc.*, supra, 317 S.W.2d 309, 315(4), where it was *further* held that the sections considered and ruled in *State v. Local No. 8-6, etc.*, supra, were also *severable* from and could stand independently of the remainder of the Act, since the remaining sections of the Act were not before the Court for consideration in that case. 317 S.W.2d 309, 323.

Further, the point relied on does *not* in any subhead thereunder direct attention to any particular section of the King-Thompson Act, although under subhead (f) Sections 295.010, 295.090, 295.100, 295.120, 295.150, 295.160 and 295.200.5 are cited, but these sections are not the sections presented to and ruled on by the trial judge. Appellants' first subpoint under Point I is that "The operations of the Company affect interstate commerce so as to bring its labor relations within the governance of the Labor Management Relations Act, 1947, and to subject it, its employees and the Union to the jurisdiction of the National Labor Relations Board." This abstract statement of law is not questioned by respondent at any place in the record and it is fully conceded by the Governor's Proclamation. Further, the appellants on this appeal have expressly waived any claim for reversal on the ground that the King-Thompson Act "directly regulates interstate commerce, and therefore offends the Commerce Clause of the United States Constitution."

In further support of appellants' first point, it is contended that "The protective applicability of the national Act to strikes conducted by public utility employees cannot be displaced because of the public character of a utility and its historic amenability to control, the importance of uninterrupted utility services to the community, or the

[fol. 266] duty to render continuous service." No such issue was ruled by the judgment entered. It is further contended that the heart of the National Act is the right to engage in free and private collective bargaining backed by the right to strike; and that in prohibiting any "concerted refusal to work" for the state after any plant, equipment or facility has been taken over by the state, the King-Thompson Act is in irreconcilable conflict with the National Act because the King-Thompson Act "forbids peaceful strikes to enforce union demands for wages, hours and working conditions." No section of the King-Thompson Act prohibiting free and private collective bargaining or peaceful strikes to enforce union demands is cited in support of the last quoted statement; however, the Act does make *unlawful the concerted refusal to work for the State in the operation of the utility after any such plant, equipment, or facility has been taken over by the State in an effort to protect the public by use of the police power of the State.* Appellants expressly admit that the right to strike enjoys constitutional protection only "against unreasonable legislative prohibition or curtailment."

In consideration of the above arguments it must be kept in mind that employees of a public service corporation upon entering such service assume an implied obligation to perform their duties in such a manner as will enable the corporation to discharge its obligations to the public. 35 Am. Jur., Master and Servant, p. 514, Sec. 82. See also *Wilson v. New*, 243 U.S. 332, 353. The Public Service Commission law recognizes this and imposes penalties on employees as well as on utilities for their wrongful acts. Sec. 386.580 RSMo 1959. Further, employees in accepting employment by a public utility, *such as a utility operating mass transportation services in a great city*, must to some extent surrender certain rights and their employment is subject to the police power of the State in emergencies and when the operating properties are taken over by the State.

In the case of *United Public Workers of America, v. Mitchell*, 330 U.S. 75, 67 S.Ct. 556, 567, in construing and upholding the Hatch Act, 18 U.S.C.A. §§ 61h and 61o, which declared unlawful certain specified political activities [fol. 267] of Federal employees, the United States Supreme

Court pointed out that fundamental human rights were not absolutes and that the "court must balance the extent of the guarantees of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of government." A restriction against taking "any active part in political management or in political campaigns" was approved. Also, the acceptance of numerous other types of employment necessarily requires the surrender of what would otherwise constitute the invasion of personal rights as, for example, in the case of *Fraternal Order of Police v. Harris*, 306 Mich. 68, 10 N.W.2d 310, 312, where the court said: "Those who serve the public, either as the makers of the law, the interpreters of the law, or those who enforce the law, must necessarily surrender, while acting in such capacity, some of their presumed private rights." Restrictions upon the political activities of civil service employees of the City of St. Louis was upheld although attacked on constitutional grounds of interference with freedom of speech and the deprivation of property and liberty without due process of law. *State ex inf. McKittrick ex rel. Ham v. Kirby*, 349 Mo. 988, 163 S.W.2d 990; and see *King v. Priest*, 357 Mo. 68, 206 S.W.2d 547, 556, appeal dismissed, 68 S.Ct. 736, rehearing denied 68 S.Ct. 901, where it was held that certain rules and regulations adopted by the Police Department of the City of St. Louis were not unconstitutional in denying appellants and other members of the police department the right of freedom of speech and freedom of assembly and petition contrary to the First Amendment and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States. Further, *in accepting employment with a company operating a mass transportation system in a great city of this State* the employees must be assumed to have done so in view of the State law governing the operation of such companies and providing for State operation in temporary emergencies to protect the public from disaster, and such law necessarily became a part of their contract of employment. See *Metropolitan Life Ins. Co. v. Siebert*, 72 F.2d 6; *Gray v. Metropolitan Life Ins. Co.*, Mo. App., 150 S.W.2d 563, 564(4).

[fol. 268] Appellants further argue that while a public utility strike may cause a local "emergency," judged by local standards, such "emergency" does not justify state prohibition or *curtailment of a strike by the employees of a utility against their employer*. Again, appellants refuse to consider the issue decided by the court as evidenced by the judgment entered. The argument overlooks the fact that the decree enjoined only the concerted refusal to work for and under the supervision of the State in the operation of the mass transportation system. The Act does not prohibit or curtail strikes by employees, absent an emergency jeopardizing the health, welfare and safety of the public sufficient to authorize and sustain the action of the Governor in taking possession and control of the physical properties, plant and transportation facilities of the employer-company against which the strike is directed. Even then judicial action is required to obtain enforcement. Further, the argument ignores appellant's admission of the existence of *jeopardy* under the provisions of the Act, *as construed by this Court*. The facts and admissions therefore bring this case *within the exceptions*, as stated, in that the issue is *not the regulation of any protected activity of a labor union* and no unfair labor practice is charged or shown. No issue, such as to picketing, peaceful or otherwise, is involved, nor was any such issue decided by the trial court. The issue is as to the right of the State *to protect the public in an emergency situation from disaster* resulting from disputes between employers and employees after state seizure of the physical properties.

A strike or lockout which jeopardizes the public health, safety and welfare is not a protected activity under the National Labor Management Relations Act, 1947. This Court in the case of *State v. Local No. 8-6, etc., supra*, 317 S.W.2d 309, 319(11) pointed out that the congressional declaration in Section 1(b) of the Act, 29 U.S.C.A., Sec. 141(b) clearly indicated a purpose to subordinate industrial strife to the public health, safety and welfare; and that consistent with the subordination of labor acts and practices which jeopardize the public interest, it is clear that Congress did not intend to remove any existing "limitations [fol. 269] or qualifications" on the right to strike. The

United States Supreme Court has in numerous cases, as set out in this Court's opinion (317 S.W.2d 309, 319[11]), recognized that the violation of *local laws* enacted for the preservation of property rights and personal safety are not protected by the Federal Act. It is there further pointed out that such holdings are consistent with the congressional intent as expressed in other acts where the exercise of the police power in local government is particularly suitable.

This Court also pointed out in *State v. Local No. 8-6*, etc., supra, 317 S.W.2d 309, 321 (13), that a growing number of decisions of the United States Supreme Court indicate a considerable area where state activity and regulation is permitted. The cases which support that conclusion are reviewed and considered in the mentioned opinion, 317 S.W.2d 309, 321 (13). The judgment in question here does not purport to deal with rights between the employer and the employees. It was entered after the State's seizure of the physical properties of the utility and it only enjoined the appellants "from continuing, inciting, supporting and participating in the work stoppage, refusal to work and strike against the State of Missouri." (Italics ours.) Further, we cannot and do not construe the King-Thompson Act as making any provision for the *permanent operation* of a utility by the State after any such seizure. The Act as construed by the officials of this State in administering it show that the Governor may release the control of a utility's physical property at any time after seizure. (See Appendix A and Appendix B set out at the close of this opinion.) We find nothing in the Act to prevent appellants from making application to the Governor at any time for the release of the property of the utility upon reasonable notice and terms and any such release would relieve appellants from the particular judgment entered in this case. Further, as hereinafter mentioned, in the event of the denial of such relief appellants could apply to the trial court for a modification of the judgment theretofore entered.

While Section 295.180 RSMo 1959 provides that "whenever such public utility, its plant, equipment or facility has [fol. 270] been or is hereafter so taken by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage or slowdown, or other cause, such utility, plant, equip-

ment or facility shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute, and it shall thereupon be the duty of such utility to continue the operation of the plant facility, or equipment in accordance with its franchise and certificate of public convenience and necessity" (*italics ours*), nevertheless there is no provision in the Act requiring state operation and control, until a settlement of the labor dispute has been reached, and we find no authority requiring us to so hold. Absent substantial evidence of the existence of an emergency threatening the public health, safety and welfare with impending disaster (as hereinbefore stated and previously held), state operation and control of the assets of a utility and a permanent injunction against concerted refusal to operate the utility's property cannot be sustained. Seizure and injunctive relief are provided only in emergency situations. We must and do construe the term "emergency" to imply a temporary situation and necessarily dependent upon the particular facts of the particular case under consideration. Nor can we construe the Act as authorizing a permanent injunction prohibiting defendants from striking against either the Company or the State and, therefore, the court should have retained jurisdiction of the cause, so that the equitable relief granted might be modified in accordance with changing conditions.

As stated, the right of the Union to engage in a peaceful strike against the utility is not denied by the Act, except by the limitations which are imposed during emergency situations and only after state seizure; however, the decree appealed from does not deny the right of appellants to strike against the Company, and that issue was not decided by the court. In the case of *State v. Local No. 8-6*, etc., *supra*, 317 S.W.2d 309, 321, this Court, as stated, said: "The King-Thompson Act is strictly emergency legislation and is not a comprehensive code for the settlement of labor disputes in utilities as the Wisconsin Act appeared to be. Emergency legislation is justified under the police powers. [fol. 271] * * * The purpose of seizure is the preservation of community life as encouraged and fostered by the state. The purpose of the Act is to protect its citizens against disaster. As previously indicated, we deem the strike in the circumstances in this case to be unlawful * * *"

Clearly the Legislature did not intend that disaster conditions to the public and the creation of emergency situations endangering the health, safety and welfare of the general public should be used for the purpose of obtaining the settlement of even peaceful strikes.

There is no contention here by the State, nor has this Court held that the total stoppage of the mass transportation system in Kansas City, after reasonable notice and an opportunity to the public to adjust to such a situation, would create a *permanent emergency situation* entitling the State to a permanent injunction against a concerted stoppage of work, or authorizing the State to indefinitely operate the transportation system on the theory of protecting the citizens *from disaster in an emergency situation*. Nor does this Court expect to so hold. However, in this case, jeopardy to the public, within the meaning of the provisions of the Act and as construed by this Court, is now admitted by appellants to have existed at the time of the seizure and the entering of the judgment appealed from.

If the emergency situation no longer in fact exists, appellants may apply to the court for a modification of the decree on terms, since it is not this Court's purpose or intention to hold that the mere total discontinuance of mass transportation services in Kansas City, Missouri, after reasonable notice to the public will necessarily create such an emergency or evidence such an impending disaster to public health, safety and welfare as to justify permanent injunctive relief under the King-Thompson Act.

In their printed argument the appellants undertake to support their attack upon the entire King-Thompson Act, as being in conflict with and pre-empted by the Labor Management Relations Act, by citing Section 295.200 RSMo 1959 and by stating that it "prohibits a strike as a means of enforcing demands", however, defendants do not claim *the* [fol. 272] *right to strike against the State* and in their answer to plaintiff's petition *they expressly denied that they did strike against the State*, although the fact that, by concerted action, they refused to operate the mass transportation system under the State's supervision and control, until the injunction decree was entered, is not disputed.

Appellants make numerous arguments and contentions with reference to the invalidity of the King-Thompson Act considered as a whole, as stated, under Point I of their "Points Relied On." However, the Act, considered as a whole, is not before the Court for consideration, nor was it before the trial court, nor was its validity as a whole considered or ruled. Appellants are limited to a consideration of the judgment entered, which specific judgment they have elected to ignore in their brief. It will be unnecessary to review in detail the subpoints set out in appellants' brief, since appellants' attack on all sections of the King-Thompson Act is primarily based upon the decision of the Supreme Court in the case of *Amalgamated Ass'n of St., Elec. Ry. & Mtr. Coach Employees of America, Div. 998, et al., v. Wisconsin Employment Relations Board*, 340 U.S. 383.

Before considering that case in some detail perhaps we should say that experienced lawyers and competent judges have long since ceased to accept, as legal authority, mere casual statements in the opinion of any court, particularly where such statements are unrelated to the facts and issues presented for decision. Mere obiter, or a speech by the writer of an opinion, must not be confused with the *decision of the court* based upon the facts shown by the record and by the legal issues presented to and decided by the court.

A mere casual examination of the Wisconsin Act, which was considered in the *Amal. Ass'n* case (Wisc. Statute 1949, Sec. 111.50 to 111.63), shows that the similarities between the Wisconsin Act and the King-Thompson Act, Chapter 295 RSMo 1959, are very superficial, while the differences are fundamental. These differences clearly appear from even a casual examination of the opinion of Chief Justice Vinson in the *Amal. Ass'n* case, from which opinion we shall quote at some length. These fundamental differences are [fol. 273] shown, as follows, in the *Amal. Ass'n* opinion. The court said: "Whenever such an 'impasse' occurs, the Wisconsin Employment Relations Board is empowered to appoint a conciliator to meet with the parties in an effort to settle the dispute. . . . In the event of a failure of conciliation, the Board is directed to select arbitrators who shall 'hear and determine' the dispute. . . . In summary, the act substitutes arbitration upon order of the Board for

collective bargaining whenever an impasse is reached in the bargaining process. And, to insure conformity with the statutory scheme, Wisconsin *denies to utility employees the right to strike.* (340 U.S. 383, L.C. 388) * * * However, the Wisconsin Act before us is *not 'emergency' legislation but a comprehensive code for the settlement of labor disputes between public-utility employers and employees.* Far from being limited to 'local emergencies,' the act has been applied to disputes national in scope, and application of the act does not require the existence of an 'emergency.' (L.C. 393-394) * * * And, where, as here, the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in case of national emergencies, however serious, it is manifest that the state legislation is in conflict with federal law. (L.C. 394) * * * Michigan, in O'Brien, sought to impose conditions on the right to strike and now Wisconsin seeks to abrogate that right altogether insofar as petitioners are concerned. (L.C. 395-396) * * * Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. This court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation. *Fifth.* It would be sufficient to state that the Wisconsin Act, *in forbidding peaceful strikes for higher wages in industries covered by the Federal Act, has forbidden the exercise of rights protected by § 7 of the Federal Act.*" (L.C. 397-398) (Italics and local citations ours.)

[fol. 274] After pointing out further specific conflicts between the Wisconsin Act and the policies of the National Act the opinion concludes: "Having found that the Wisconsin Public Utility Anti-Strike Law conflicts with that federal legislation, the judgments enforcing the Wisconsin Act cannot stand." (L.C. 399.)

The King-Thompson Act is so *fundamentally different* from the Wisconsin Act that the mentioned case does not apply and further the judgment appealed from in this case

is so totally different from the Wisconsin judgment, which was reversed, that the Wisconsin case could not apply and is not controlling.

The King-Thompson Act makes no provision for arbitrators who shall hear and finally *determine* labor disputes, nor does the King-Thompson Act deny to utility employees the right to strike. No issue as to compulsory arbitration is presented on this record. The Act does provide for the safety of the public in the event of a strike and the Governor's finding of emergency and for judicial proceeding after the State has taken possession of the utility's property. There is no provision in the King-Thompson Act purporting to provide for concurrent *state regulation* of peaceful strikes for higher wages. In any event that is not the issue in this case. Further, the King-Thompson Act has been held by the highest court in Missouri to be emergency legislation; and that "The purpose of seizure is the preservation of community life as encouraged and fostered by the State. The purpose of the Act is to protect its citizens against disaster." 317 S.W.2d 309, 321. Appellants have failed to point out wherein by the King-Thompson Act "the State seeks to deny *entirely* a federally guaranteed right," (*italics ours*) or wherein the Act has been applied to "disputes national in scope." No section of the King-Thompson Act seeks to abrogate the right of employees to strike against their employers, prior to the state's seizure of the utility, and the judgment here does not mention the employer. The employer-employee relationship is not the subject matter of the action. Further, we find no provision of the National Labor Relations Act *authorizing* a strike against the state, and the Federal legislation in question [fol. 275] does not pre-empt the right of the State to obtain the decree in question here.

Further, it is well settled that the exercise of the police power of a state is superseded only where the repugnance or conflict with a Federal act is so direct and positive that the two acts cannot be reconciled. *United Const. Workers, Affiliated with United Mine Workers of America v. Laburnum Construction Corp.*, 347 U.S. 656; *Breard v. City of Alexandria*, 341 U.S. 622. As stated by Mr. Chief Justice Hughes in *Kelly v. State of Washington*, 302 U.S. 1, 10:

"The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'" And see *State v. Local 8-6*, etc., *supra*, 317 S.W.2d 309, 321.

It would unduly extend this opinion to review and distinguish the many cases relied upon by appellants to obtain the reversal of the present judgment. Perhaps a few other cases than the *Wisconsin* case should be referred to. Appellants cite the case of *Youngstown Sheet & Tube Company v. Sawyer*, 343 U.S. 579, and say that "Seizure is the particular technique employed by the King-Thompson Act to signal the prohibition of a utility strike"; that "the Supreme Court settled the question * * * when it held that the President had no constitutional power to seize the steel mills to avert a national emergency, and premised this conclusion in significant part on the fact that Congress in the Taft-Hartley Act had withheld seizure authority from the President even in national emergency strikes"; and that "the power to seize which Congress withheld from the President to avert a national emergency it did not grant to a State Governor to avert a local emergency." In making the above arguments, the appellants overlook the fact that the Governor of Missouri acted upon legislative authority granted by the State Legislature under the police power of the State; and that the decree appealed from by appellants was entered after notice and a hearing in a judicial proceeding.

Appellants also cite *Weber, et al., v. Anheuser-Busch, Inc.*, 348 U.S. 468, 480, where, in a dispute between two unions [fol. 276] over work being performed for their employer, each claiming the work for its own members, one union went on a strike and the employer filed with the National Labor Relations Board a charge of an unfair labor practice under Section 8(b)(4)(D) of the Taft-Hartley Act against the striking union, but the Board held that no "dispute" existed within the meaning of that subsection and quashed the notice of a hearing. The employer then filed a complaint in a Missouri state court alleging violation of other subsections

of the Taft-Hartley Act and also a violation of the State's restraint of trade statute. The state court enjoined the strike as a restraint of trade, but the United States Supreme Court held that the state court was without jurisdiction to enjoin the conduct of the union since its jurisdiction had been pre-empted by authority vested in the National Labor Relations Board with reference to unfair labor practices. It will be noted that that case was instituted in the state court by the employer for an injunction to restrain picketing of the plant by defendants (employees) on the ground that it was in furtherance of an unlawful conspiracy and in restraint of trade. In other words, the action was between the employer and the employee, while in the case now before this Court the employer, Kansas City Transit, Inc., is not even a party to the record, which is wholly between the State of Missouri and the defendants-appellants, and no unfair labor practices are involved. Other cases cited by appellants are also easily distinguishable from the present proceeding.

Appellants also argue that the failure of the Senate of the 86th Congress to approve the Holland Amendment and the previous rejection by Congress of certain other proposals must be construed as supporting appellants' construction of certain cases previously decided by the Supreme Court. We do not consider the cases relied upon to be controlling in this case, nor do we consider the rejection of the various mentioned proposals to be of any significance. We find no merit in appellants' Point I of their brief insofar as it applies to any issue presented to and decided by the trial court in this proceeding.

Under Point II appellants say that "prohibition of a public utility strike, *without substituting a compensating equivalent for it*, offends substantive due process." The assignment [fol. 277] is an abstract statement of law, not directed to the judgment appealed from and it does not comply with the rules of this Court as a proper assignment. No constitutional provision is cited by number. The right to strike is not in question in this case as "the right to strike" is generally understood, to wit, against a private employer. Appellants further argue that "To prohibit public utility employees from striking cripples their ability through collec-

tive bargaining to induce their employer to grant satisfactory terms and effectively compels them to work under terms unilaterally dictated by the employer." Again, that issue is not before the court for consideration, since the appeal is from a particular judgment which does not concern the right of public utility employees to strike against their employer and there is nothing in the King-Thompson Act to prevent peaceful strikes where public safety is not endangered. *The King-Thompson Act deals with the protection of the public, after such a strike has been called or has been put into effect and after public safety, health and welfare is sufficiently endangered to require the State to be concerned with the operation of the utility and has taken possession of its physical property and seeks to operate the utility under its supervision to prevent public disaster.*

It is further argued that "A statute is arbitrary and capricious . . . when it sacrifices the employees' interest in a fair wage and working conditions by depriving them, without any compensating equivalent, of the right to strike, their only effective weapon in the competition over the division of the joint product of capital and labor." Again, *that is not the issue presented by the appeal from the judgment* and, for that matter, the particular assignment that "Prohibition of a public utility strike, *without substituting a compensating equivalent for it*, offends substantive due process" (italics ours) was not an issue presented to or decided by the trial court and hence it is not for review here, nor does any provision of the King-Thompson Act, as stated, contain any provision prohibiting public utility employees from striking against their private employer, except that [fol. 278] under the present judgment they are enjoined from striking against the State during state operation of the utility.

As stated, the third assignment under Points and Authorities in appellants' brief is that "Prohibition of a public utility strike, *without substituting a compensating equivalent for it*, results in involuntary servitude." Appellants argue that the provision of the King-Thompson Act prohibiting concerted refusal to work for or to strike against the State, after the State, in an emergency to protect its people under the police power, has taken possession of a

strike-bound utility, imposes involuntary servitude. This argument ignores and fails to give consideration to Section 295.210 RSMo 1959, the closing provision of the King-Thompson Act. We find nothing in the record presented on appeal to show that either Point II or III in the form presented here was directly presented to or passed upon by the trial court, or that either point was impliedly ruled by the judgment entered. However, we approve the reasoning and ruling of this Court on somewhat similar issues in *State v. Local No. 8-6, etc., supra*, 317 S.W.2d 309, 325(22).

Appellants' fourth point, as stated, is that "To forbid a person to 'incite' or 'support' a strike or refusal to work is unconstitutional for the dual and interlocking reasons that it abridges free speech and has the vice of vagueness." This contention, like the two previous ones, is not directed to the *particular decision* as made by the court under the particular facts of this case, and again appellants seek an advisory opinion upon hypothetical issues which were not ruled and decided. Clearly there is nothing in the decree as entered that interferes in any way with employees' expressions of distaste for the employer's practices insofar as they relate to their relationship to the private employer, the utility or transportation company. Appellants' argument assumes that the decree is directed to a strike against the Company rather than a concerted refusal to operate the mass transportation system under state control.

Further, with reference to the issues attempted to be raised by appellants' Points II, III and IV, perhaps we [fol. 279] should say that, while in the closing portion of what appellants call a "Statement of Facts", the appellants say that their "brief is confined to showing that the King-Thompson Act is invalid upon the ground (1) that it is in conflict with and preempted by the Labor Management Relations Act, 1947, and (2) that it abridges federal rights conferred by the First, Thirteenth and Fourteenth Amendments of the United States Constitution," yet these latter issues are not properly presented for decision under Points and Authorities. As stated, the last three assignments do not comply with the rules of this Court governing appellate briefs. All of the assignments are, however, in effect, more or less directed to alleged violations by the decree of

appellants' alleged rights under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States. It is sufficient to say that, substantially, the same issues were raised and arguments made with reference to this same King-Thompson Act in the case of State v. Local No. 8-6, etc., supra; and that said issues were therein ruled adversely to appellants' contentions, as may be noted by reference to the report of that case in 317 S.W.2d 309, 324(19), 325(22), and this Court again approves the rulings in said opinion with reference to said issues, although said issues are not properly raised and presented for decision in this case and are not before this Court for decision at this time.

As hereinbefore indicated, the judgment entered is modified so that the trial court retains jurisdiction of the cause, so that it may modify its decree in accordance with changing facts and conditions as hereinbefore indicated. As modified the judgment is affirmed and the cause is remanded.

S. P. Dalton, Judge.

All concur

**The Following Information on 9 Seizures under the King-Thompson
Act Was Compiled from the Records of the Missouri State Board
of Mediation, Jefferson City, Missouri**

<u>Case Year No.</u>	<u>Style of Case</u>	<u>Contract Expired</u>	<u>Strike Started</u>	<u>Seizure Started</u>	<u>Seizure Ended</u>
1950 167	Kansas City Public Service Com- pany, Div. 1287, Amal. Assn. of St. Elec. Rlwy. and Mtr. Coach Emp. of America	12/31/49	4/29/50	4/29/50	12/11/50
1950 164	St. Louis Public Service Com- pany, Local 788, Amal. Assn. of St. Elec. Rlwy. and Mtr. Coach Emp. of America	12/31/49	8/10/50	8/10/50	10/19/50
1955 560	St. Louis Public Service Co., Div. 788, Amal. Assn. of St. Elec. Rlwy. and Mtr. Coach Emp. of America	2/28/55	10/10/55	10/11/55	11/23/55
1956 645	Laclede Gas Company Local 8-194, Oil, Chemical and Atomic Workers Int'l. Union	6/30/56	7/1/56	7/5/56	10/31/56
646	Laclede Gas Company Local 8-6, Oil, Chemical and Atomic Workers Int'l. Union				
647	Laclede Gas Company Local 8-109, Oil, Chemical and Atomic Workers Int'l. Union				
1956 650	Kansas City Power & Light Com- pany, Local 412, IBEW	6/30/56	7/5/56	7/6/56	7/17/56
651	Kansas City Power & Light Com- pany, Local 1464, IBEW				
652	Kansas City Power & Light Com- pany, Local 1613, IBEW				
1957 708	Kansas City Power and Light Com- pany, Local 1464, IBEW	6/30/57	8/26/57	8/31/57	6/25/58
709	Kansas City Power and Light Com- pany, Local 412, IBEW				
710	Kansas City Power and Light Com- pany, Local 1613, IBEW				
1957 737	Kansas City Public Service Com- pany, Div. 1287, Amal. Assn. of St. Elec. Rlwy. and Mtr. Coach Emp. of America	10/31/57	11/6/57	11/6/57	3/6/58
1950 889	Kansas City Power and Light Com- pany, Local 1464, IBEW	6/30/60	7/12/60	8/6/60	7/1/61
1961 957	Kansas City Transit (formerly Pub- lic Service Company) Div. 1247, Amal. Assn.	10/31/61	11/13/61	11/13/61	still un- der seiz- ure

Respectfully submitted,

MISSOURI STATE BOARD OF MEDIATION

Daniel C. Rogers

May 16, 1962

Daniel C. Rogers

Chairman

Non-Seizure Cases under the King-Thompson Act

No.	Year	Case No.	Style of Case	Strike Started	Strike Ended
(1)	1948	24	Associated Highway Carriers, Inc. Local No. 41—Int'l. Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Kansas City)	3/8/48	3/14/48
(2)	1952	267	Southwestern Bell Telephone Co. Communications Workers of America Division 20	3/6/52	3/10/52
(3)	1952	280	Capital City Telephone Company Local No. 2, IBEW	3/28/52	4/2/52
(4)	1952	367	Motor Carriers Council of St. Louis, Local 600, District 9, Teamsters, Chauffeurs, Warehousemen & Helpers of America (St. Louis)	6/30/52	8/2/52
(5)	1952	293	Grundy Electric Coop., Inc., Local No. 53, IBEW	8/29/52	8/31/52
(6)	1953	418	Capital City Telephone Company, Jefferson City Local No. 2, IBEW	2/27/53	4/2/53
(7)	1953	(Wild cat)	Laclede Gas Company Local 8-109, Oil, Chemical & Atomic Workers International Union	3/23/53	3/24/53
(8)	1953	432	St. Louis Public Service Company Div. 788—Amal. Assn. of St. Elec. Rlwy. and Mtr. Coach Employees	7/1/53	7/2/53
(9)	1953	451	Southwestern Bell Telephone Co. Communications Workers of America	8/20/53	8/21/53
(10)	1953	359	Kansas City Power & Light Company Local 1464, IBEW	9/18/53	9/22/53
(11)	1954	505	Transcontinental Bus System, Inc., Continental Central Lines Brotherhood of Railroad Trainmen	7/5/54	10/7/54
(12)	1954	511	Kansas City Power & Light Company Local 1013, IBEW (Clerical Employees)	7/22/54	7/22/54
(13)	1955	563	Missouri Water Company District 50, UMWA	3/23/55	3/25/55
(14)	1955	516	Laclede Gas Company Local 8-6, Oil, Chemical & Atomic Workers	5/13/55	5/15/55
(15)	1957	744	Pemiscot-Dunklin Electric Cooperative Hayti Local 702, IBEW	12/21/57	12/21/57
(16)	1958	778	Union Electric Company Local 1439, IBEW	3/11/58	3/12/58
(17)	1960	885	Laclede Gas Company Local 8-194, Oil, Chemical & Atomic Workers International Union	6/30/60	7/2/60
(18)	1960	886	Laclede Gas Company Local 8-6, Oil Chemical & Atomic Workers International Union	6/30/60	7/2/60
(19)	1961	926	Gas Service Company Local 781, Gas Workers Metal Trades Union	6/7/61	7/29/61
(20)	1961	958	Gas Service Company, District 50, UMWA Region 50	11/1/61	1/10/61
(21)	1962	960	Crawford Electric Cooperative Inc., Local No. 2, IBEW, Bourbon	2/5/62	2/12/62

The Governor did not make a finding in any of the foregoing twenty-one strikes that the public interest, health and welfare was jeopardized. There was, therefore, no seizure in any of the cases.

Respectfully submitted,

MISSOURI STATE BOARD OF MEDICATION

/s/ Daniel C. Rogers, May 16, 1962

Daniel C. Rogers

Chairman

[fol. 282]

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI, Respondent,

49377 vs. Appeal from the Circuit Court of Jackson County

DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA: LOREN HARGUS, PEARL R. FINCH, JAMES L. GRIMES, LORRAIN B. FIRKINS, JAMES SMIRL, DELBERT H. LORD, VICTOR H. STUEVE, EARNEST E. O'NEILL, WM. V. MITCHELL, OLIVER D. PACE, EDWARD J. ARENS, LEWIS A. COPPLE, LESTER F. PARKER, JAMES T. STROHM, DONALD RIGBY and VINCENT ANNELLO, each individually as an officer of DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, et al., Appellants.

JUDGMENT—October 8, 1962

Now at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered be modified so that the trial court retains jurisdiction of the cause, and as modified, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellants costs and charges herein expended and have therefor execution. (Opinion filed).

[fol. 283]

[File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

EX BANC

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed October 18, 1962

I. Notice is hereby given that Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Loren Hargus, Pearl B. Finch, James L. Grimes, Lorrain B. Firkins, James Smirl, Delbert H. Lord, Victor H. Stueve, Earnest E. O'Neill, Wm. V. Mitchell, Oliver D. Pace, Edward J. Arens, Lewis A. Copple, Lester F. Parker, James T. Strohm, Donald Highby, Vincent Annelle, Wm. K. Boland, Frank E. Brown, Herbert Lee Brown, A. F. Clark, Kenneth B. Hood, Carroll R. Lollard, Loyd A. Dailey, Earl Thomas Denyer, Joseph M. Eitel, Harold L. Ellis, James Clifford Fisher, Robert Lee Fravel, Robert Donald Goforth, John G. Hall, and Orville George Halley hereby appeal to the Supreme Court [fol. 284] of the United States from the final judgment of the Supreme Court of Missouri, en banc, entered in this action on October 8, 1962, affirming as modified the decree of the Circuit Court of Jackson County, Kansas City, Missouri.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. The transcript of proceedings before the Circuit Court of Jackson County, Missouri, at Kansas City, transmitted on the appeal to the Supreme Court of Missouri, including the following:

1. Petition for injunction.
2. Temporary restraining order.

3. Motion to dismiss.
4. Transcript of testimony taken at the trial and statement of counsel at the conclusion of the trial.
5. Defendant's exhibits 1 through 12.
6. Judgment entry of November 28, 1961.
7. Stipulation filed December 22, 1961.
8. Decree entered February 12, 1962.
9. Notice of appeal filed February 21, 1962.
10. Stipulation as to exhibits.
11. Approval of transcript.
12. Answer of defendants.

B. The entire transcript of proceedings before the Supreme Court of Missouri, including the following:

1. Appellants' alternative motion (1) to summarily affirm the judgment, or (2) to expedite the appeal by submitting the appeal on briefs without oral argument.

[fol. 285] 2. Suggestions of respondent with reference to appellants' alternative motion.

3. Suggestions of Gage, Hodges, Moore, Park & Kreamer as amicus curiae in respect of appellants' motion to summarily affirm the judgment.

4. Suggestions of Spencer, Fane, Britt & Browne in opposition to appellants' motion for summary affirmance.

5. Order of Supreme Court of Missouri of April 9, 1962 ruling upon appellants' alternative motion.

6. Motion of Spencer, Fane, Britt & Browne to suspend the rules, to require filing of a supplemental brief, and to allow appropriate time for responsive briefs.

7. Motion of appellants to strike motion of amici curiae to suspend the rules, or, in the alternative, to deny amici's motion.

8. Suggestions in opposition to motion to strike.

9. Order of Supreme Court of Missouri ruling on motion to suspend rules.

C. The opinion of the Supreme Court of Missouri filed October 8, 1962.

D. The judgment of the Supreme Court of Missouri filed October 8, 1962.

E. This notice of appeal.

F. The clerk will also please certify, for transmission to and lodging with the Clerk of the Supreme Court of the United States, one copy each of the briefs filed with the Supreme Court of Missouri by appellants, respondent, amici curiae Gage, Hodges, Moore, Park & Kreamer, and amici curiae Spencer, Fane, Britt & Browne, and the letter dated May 28, 1962, of Bernard Dunau, counsel for appellants, filed in lieu of a reply brief.

[fol. 286] III. The following questions are presented by this appeal:

A. Whether a Missouri statute known as the King-Thompson Act (Ch. 295, Rev. Stat. Mo., 1949), which provides a special type of compulsory fact-finding procedure applicable to labor disputes in public utilities and which makes "unlawful" "any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state . . . , as a means of enforcing any demands against the utility or against the state," is in conflict with and preempted by the Labor Management Relations Act, 1947.

B. Whether the King-Thompson Act, by prohibiting a public utility strike without substituting a compensating equivalent for it, offends substantive due process in violation of the Fourteenth Amendment of the United States Constitution and imposes involuntary servitude in violation of the Thirteenth Amendment of the United States Constitution.

C. Whether the King-Thompson Act, by making it "unlawful" to "incite" or "support" a "strike or concerted refusal to work for any utility" after it "has been taken

over by the state," abridges free speech in violation of the Fourteenth Amendment of the United States Constitution as it incorporates the First Amendment and is void for vagueness in violation of the Fourteenth Amendment of the United States Constitution.

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Attorneys for Appellants.

[fol. 287] Proof of Service (omitted in printing).

[fol. 288] Clerk's Certificate (omitted in printing).

[fol. 289]

SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—

January 14, 1963

Appeal from the Supreme Court of the State of Missouri.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

January 14, 1963